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No. 93-445

IN THE
# Supreme Court of the United States
OCTOBER TERM, 1993

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LENARD RAY BEECHAM
and
KIRBY LEE JONES,
*Petitioners,*
v.
UNITED STATES OF AMERICA
*Respondent.*

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**On Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit**

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## BRIEF FOR THE PETITIONERS

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## QUESTION PRESENTED

Whether a person with a federal felony conviction who has had his civil rights restored under state law is deemed a felon under 18 U.S.C. § 921(a)(20), which removes the firearms ineligibility for any person who "has had civil rights restored."

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## BRIEF FOR THE PETITIONERS

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### OPINIONS BELOW

The opinion of the court of appeals in *United States v. Beecham* (Pet. App. 1a-9a) is unreported. The opinion of the court of appeals in *United States v. Jones* (Pet. App. 10a-22a) is reported at 993 F.2d 1131. The opinions of the magistrate judge in the *Jones* case (Pet. App. 25a-30a) and of the district court in the *Beecham* case (J.A. 10-16) are unreported.

### JURISDICTION

The decision of the court of appeals in the *Beecham* case was rendered on June 2, 1993. A timely petition for

rehearing and suggestion for rehearing *en banc* was denied on June 29, 1993. The decision of the court of appeals in the *Jones* case was rendered on May 24, 1993. The petition for a writ of certiorari was filed with respect to both the *Beecham* and *Jones* decisions under Rule 12.2 of the Rules of this Court on September 20, 1993. This Court granted certiorari on November 15, 1993. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

## STATUTORY PROVISIONS INVOLVED

1. Section 922(g) of Title 18 provides, in relevant part:

> (g) It shall be unlawful for any person—
>
> (1) who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;
>
> * * * *
>
> to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

2. Section 921(a)(20) of Title 18 provides as follows:

> (20) The term "crime punishable by imprisonment for a term exceeding one year" does not include—
>
> (A) any Federal or State offenses pertaining to antitrust violations, unfair trade practices, restraints of trade, or other similar offenses, relating to the regulation of business practices, or
>
> (B) any State offense classified by the laws of the State as a misdemeanor and punishable by a term of imprisonment of two years or less.
>
> What constitutes a conviction of such a crime shall be determined in accordance with the law of the jurisdiction in which the proceedings were held. Any conviction which has been expunged, or set aside or for which a person has been pardoned or has had civil rights restored shall not be considered a conviction for purposes of this chapter, unless such pardon, expungement, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms.



3. Section 925(c) of Title 18 provides, in relevant part:

> (c) A person who is prohibited from possessing, shipping, transporting, or receiving firearms or ammunition may make application to the Secretary for relief from the disabilities imposed by Federal laws with respect to the acquisition, receipt, transfer, shipment, transportation, or possession of firearms, and the Secretary may grant such relief if it is established to his satisfaction that the circumstances regarding the disability, and the applicant's record and reputation, are such that the applicant will not be likely to act in a manner dangerous to public safety and that the granting of the relief would not be contrary to the public interest. Any person whose application for relief from disabilities is denied by the Secretary may file a petition with the United States district court for the district in which he resides for a judicial review of such denial.

## STATEMENT

### 1. *The Statutory Framework*

Federal law has restricted receipt of certain firearms by defined categories of felons since the Federal Firearms Act of 1938. 52 Stat. 1250 (1938). The Gun Control Act of 1968 (82 Stat. 1213 (1968)), as amended by the Firearms Owners' Protection Act (100 Stat. 449 (1986)), enumerates seven classes of persons whose receipt or possession of firearms constitutes a criminal offense punishable under 18 U.S.C. § 922(g) by up to 10

years in jail (18 U.S.C. § 924(a)(1)) and a $250,000 fine (18 U.S.C. § 3571(b)(3)).

Congress passed the Firearms Owners' Protection Act (100 Stat. 449 (1986)) in April 1986. Section 101 of that Act amended 18 U.S.C. § 921(a)(20), which defines a "conviction" for purposes of the criminal prohibition of Section 922(g). These two cases, consolidated for review by this Court pursuant to Rule 12.2, concern the meaning of the 1986 provision that directs that "[a]ny conviction . . . for which a person . . . has had civil rights restored shall not be considered a conviction for purposes of this chapter."

The statutory reference to "restoration" of civil rights relates to state laws suspending or forfeiting enumerated civil rights of convicted felons. Florida law, for example, provides (Fla. Stat. Ann. § 944.292 (West 1985)):

> Upon conviction of a felony as defined in s. 10, Art X of the State Constitution, the civil rights of the person convicted shall be suspended in Florida until such rights are restored by a full pardon, conditional pardon, or restoration of civil rights granted pursuant to s. 8, Art. IV of the State Constitution.

The "civil rights" forfeited or suspended under such laws vary from State to State. In most jurisdictions, they include the rights to vote, hold public office, and serve on a jury. For example, Ohio Rev. Code Ann. § 2961.01 (Anderson 1993) declares:

> A person convicted of a felony under the laws of this or any other state or the United States, unless his conviction is reversed or annulled, is incompetent to be an elector or juror, or to hold an office of honor, trust or profit . . . .

Some jurisdictions extend the loss of civil rights to "private trusts, authority and power." Idaho Code Ann. § 18-310(1) (1949 & Supp. 1993); New York Civ. Rights Law § 79(1) (McKinney 1992). Others preclude felons from serving as police officers (Mass. Ann. Laws ch. 41, § 96A (Law. Co-op. 1993)); peace officers (Cal. Gov't Code § 1029 (Deering 1993)); or sheriffs (Or. Rev. Stat. § 206.015 (1991)). Convicted felons are also prevented in some states from serving in a fiduciary capacity, such as executor, administrator, guardian or trustee. Ala. Code §43-2-22 (1975); Wash. Rev. Code Ann. §§ 11.36.010, 11.36.021 & 11.88.020 (West 1987 & Supp. 1993). Appendix A to this brief lists and categorizes various loss-of-rights provisions provided by State laws.



Some state forfeiture-of-rights statutes, such as the Ohio provision previously quoted, refer explicitly to federal convictions. Others include federal convictions by broad encompassing language. We know of no jurisdiction that specifically—by statutory language or judicial decision—cludes federal convictions from a forfeiture-of-civil-rights provision.

State statutes typically provide for restoration of rights in the event of expungement, pardon, or like events that effectively negate the original conviction. Many States also provide that rights may be restored through procedures that do not affect or call into question the original conviction.

State laws vary in their procedures for restoration of rights. Some require application to a court or specified state agency for such relief. *E.g.*, Ariz. Rev. Stat. Ann. § 13-910(B) (1989) (providing that person discharged from federal prison may, after two years from the date of discharge, apply for restoration of civil rights with the clerk of the superior court in the county where the person lives). Others provide that a restoration of rights automatically follows on completion of the full term of a sentence, usually including period of probation or parole. See, *e.g.*, Mont. Code Ann. § 46-18-801(3) (1993) (restoring "all civil rights and full citizenship, the same as if such conviction had not occurred," on expiration of sentence).

Under some statutory procedures, the felon receives a certificate or other formal declaration that his or her rights have been restored. *E.g.*, N.H. Rev. Stat. Ann. § 607-A:5 (1991). In other jurisdictions, the restoration is effective automatically, and there is no formal or written attestation regarding its effect. See, *e.g.*, Idaho Code § 18-310 (2) (1949 & Supp. 1993). Appendix B to this brief lists and categorizes the various restoration-of-rights provisions of State laws.

Although there are many specific provisions of state law dealing with the legal disability to own or possess a firearm (see, *e.g.*, N.J. Rev. Stat. § 2C:39-7 (1982)) and state law provisions that deal specifically with the restoration of the right to possess firearms (see, *e.g.*, Mich. Comp. Laws Ann. § 28.424(1) (West Supp. 1993)), the two cases before this Court do not concern those limited statutes. Both cases involve defendants who were convicted in federal courts and thereafter had civil rights restored *generally* pursuant to the state law of the jurisdiction where they resided.

### 2. *The Beecham Case*

Lenard Ray Beecham was convicted in 1979 in the United States District Court for the Western District of Tennessee of violating 18 U.S.C. § 922(h), the felon-in-possession provision of the Gun Control Act of 1968. Pet. App. 3a; J.A. 11. Following his release, Beecham moved to Raleigh, North Carolina, where he purchased a used automobile dealership in Raleigh. *Id.*

Between November 1990 and March 1991, Beecham purchased or sold four firearms. He bought a pistol that he later sold to his business partner, a shotgun that he also sold to his partner, and a shotgun that he bought from a licensed firearms dealer. Related to this latter purchase, Beecham completed the required Bureau of Alcohol, Tobacco and Firearms ("BATF") form, and answered "no" to the question asking whether he had been



convicted of a felony. In February 1991, Beecham bought a pistol as part of the sale of an automobile, and, a few weeks later, he sold a revolver to a BATF agent posing as a customer at his dealership. Pet. App. 4a.

In March 1991, BATF agents executed search warrants at the dealership and at Beecham's home. These searches produced evidence that he possessed several additional firearms. In October 1991, Beecham was indicted in the United States District Court for the Eastern District of North Carolina on five counts of possessing a firearm in violation of 18 U.S.C. § 922(g)(1), five counts of dealing in firearms without a license in violation of 18 U.S.C. § 922(a)(1)(A), and one count of making a false statement in connection with the purchase of a firearm in violation of 18 U.S.C. § 922(a)(6). J.A. 5-9. Following a jury trial, Beecham was convicted on all counts. Pet. App. 4a-5a.

Beecham moved after the verdict for a judgment of acquittal on the felon-in-possession and false-statement counts. The district court granted the motion on the ground that the government had failed to prove that Beecham had a "conviction" within the meaning of 18 U.S.C. § 922(g). The district court rested this conclusion on its holding that, under Tennessee law, Beecham qualified for restoration of his civil rights. J.A. 14-15.

The government appealed, and the Court of Appeals for the Fourth Circuit reversed. The court of appeals held that in light of its very recent decision in *United States v. Jones*, Tennessee's restoration-of-rights law did not erase the disabling effects of the federal conviction under Section 921(a)(20). Pet. App. 5a. The case was remanded for resentencing. *Id.* at 9a.

On October 26, 1993, while his petition for a writ of certiorari was pending in this Court, the district court sentenced Beecham to an additional three months' imprisonment for the felon-in-possession and false-statement convictions. J.A. 3. The district court refused to release

Beecham pending this Court's decision, but the court of appeals ordered his release. J.A. 18.

### 3. *The Jones Case*

Kirby Lee Jones was convicted in 1971 in the United States District Court for the Southern District of Ohio of transporting a stolen vehicle across state lines. J.A. 19-20. He was also convicted in West Virginia state courts of offenses in 1969 and 1978. *Id.* In May 1982 he received a certificate from the Department of Corrections of the State of West Virginia entitled "Official Certificate of Discharge," which restored his civil rights. J.A. 22. In March 1992 Jones was indicted in the Northern District of West Virginia on one count of violating 18 U.S.C. § 922(g)(1) and one count of making a false statement in connection with the purchase of a firearm in violation of 18 U.S.C. § 922(a)(6). J.A. 19-21.

Jones moved to dismiss both counts of the indictment on the ground that in 1982 the civil rights he lost because of the state and federal felony convictions had been restored. A United States Magistrate Judge recommended that the motion to dismiss be granted (Pet. App. 25a-30a), and the district court adopted the recommendation and dismissed the indictment. J.A. 23-24.

On the government's appeal the Court of Appeals for the Fourth Circuit reversed. It acknowledged that both the Eighth and Ninth Circuits had held that a restoration of civil rights under state law erases a prior federal conviction under Section 921(a)(20). The court disagreed with these Circuits, however, and concluded "that Congress intended for a state's post-conviction restoration scheme to affect only the rights of persons convicted in that state's courts." Pet. App. 22a. The case was remanded for further proceedings. Jones then signed a conditional plea agreement, reserving his right to seek review of the court of appeals' decision. J.A. 26-30. The district court stayed entry of the plea pending the filing



of a petition for a writ of certiorari and this Court's decision. J.A. 31-32.

## INTRODUCTION AND SUMMARY OF ARGUMENT

In 1986 Congress enacted and the President signed the Firearm Owners' Protection Act ("FOPA"), which, *inter alia*, overruled a number of decisions of this Court construing FOPA's predecessor—the Gun Control Act of 1968. At issue in this case is the meaning of Section 101 of FOPA, the "primary impetus" of which, according to the court below, was "to reverse the ruling of the Supreme Court in *Dickerson v. New Banner Institute, Inc.*, 460 U.S. 103 (1983)." Pet. App. 18a-19a. See generally Hardy, *The Firearm Owners' Protection Act: A Historical and Legal Perspective*, 17 Cumb. L. Rev. 585 (1987).

In *Dickerson*, this Court ruled 5-to-4 that the then-existing federal statutory prohibition against possession of firearms by a person convicted of a felony applied to someone whose state conviction had been expunged under state law. The Court's decision rested on two discrete legal conclusions: *First*, that the defiintion of "conviction" under the federal gun control statutes is "a question of federal, not state, law, despite the fact that the predicate offense and its punishment are defined by the law of the State." 460 U.S. at 111-12. *Second*, that "expunction under state law does not alter the historical fact of the conviction, and does not open the way to a license. . . ." *Id.* at 115.

In the two sentences added in 1986 that now comprise the concluding language of 18 U.S.C. § 921(a)(20) Congress expressed its disagreement with *both* of the Court's conclusions in *Dickerson*. The first sentence declares that "conviction" is to be defined by "the law of the jurisdiction in which the proceedings were held." The second sentence prescribes that certain "convictions" are not to be deemed disabling under federal law. In this second

sentence Congress added to the precise situation presented in *Dickerson*—"any conviction which has been expunged" —three other categories of "convictions" that "shall not be considered a conviction for purposes of this chapter." These are (1) any conviction that "has been . . . set aside," (2) any conviction "for which a person has been pardoned," and (3) any conviction "for which a person . . . has had civil rights restored."

Both petitioners have been "convicted" under federal law, and we acknowledge that the predicate convictions resulting in their indictment under 18 U.S.C. § 922(g)(1) (J.A. 5, 6, 7, 8-9, 19-20) do, in fact, qualify as "convictions" under the law of the rendering jurisdictions and hence constitute "convictions" under the first sentence of the 1986 amendment. The legal question requiring resolution by this Court is whether those convictions are, pursuant to the concluding sentence of the 1986 amendment, not to be considered convictions under the federal gun control laws because both petitioners had civil rights that were lost to them because of the federal convictions "restored" by operation of state law.

Our argument that the petitioners' federal convictions do not, in light of the subsequent restoration of their civil rights, disable them from possessing firearms proceeds along three lines. *First*, we contend that the "plain meaning" approach that this Court has long taken to issues of statutory construction compels reversal of the rulings of the Fourth Circuit in these cases and acceptance of the contrary holdings of the Eighth and Ninth Circuits. More specifically, we note that the government's proposed construction of Section 921(a)(20) inserts an unexpressed distinction into that statute—*i.e.*, a difference between state convictions and federal convictions. Decisions of this Court, rendered with opinions written by various Justices, firmly establish the rule of statutory construction that no unexpressed limitation will be read into statutory language that is clear and unqualified on its face. This



is a rule that has been applied recently by this Court in both criminal and civil cases, and that has particularly governed decisions involving the federal firearms laws. Indeed, the rationale that produced the decision in *Lewis v. United States*, 445 U.S. 55 (1980), requires reversal of the decision of the Fourth Circuit.

*Second*, we discuss the legislative history of the 1986 amendments and demonstrate that it does not show a "clearly expressed legislative intention" to qualify, in any way, the plain meaning of the words Congress chose. The legislative history lacks any material that could support the construction given to Section 921(a)(20) by the government and the court below. Moreover, contrary to the result urged by the government, there are sound policy reasons to interpret the statute so as to afford *less* opportunity for state felons to possess firearms than for federal felons. In any event, amendment of the statute, if it is desirable policy, must be left to the Congress.

*Third*, we call attention to the "rule of lenity" that governs the construction of federal criminal statutes. In this situation, the statutory language does not support the more harsh reading of the law; that result can be achieved only by stretching the words of the law and reading in an implied distinction between federal and state convictions. It would be exceedingly unfair to defendants, who have no warning from the face of the statute that it should be read in this manner, to apply the law against them.

## ARGUMENT

### I. THE PLAIN MEANING OF CONGRESS' 1986 AMENDMENT TO SECTION 921(a)(20) IS THAT BOTH FEDERAL AND STATE CONVICTIONS SHALL "NOT BE CONSIDERED" DISABLING IF THE DEFENDANT'S CIVIL RIGHTS HAVE BEEN "RESTORED" BY ANY APPLICABLE LAW

The statutory language that Congress used to overrule this Court's *Dickerson* decision and that controls this case is not complex or convoluted. It declares, in straightforward terms, that "[a]ny conviction . . . for which a person . . . has had civil rights restored shall not be considered a conviction for purposes of this chapter . . . ."

Congress referred explicitly to "Federal" and "State" laws in subsections (A) and (B) of Section 921(a)(20), thereby demonstrating that it was not oblivious to the different jurisdictions that could affect an individual's rights. But the last sentence of Section 921(a)(20) does not include the words "Federal" or "State." It speaks broadly of "any" conviction and does not limit the jurisdictions that may grant the restoration of rights that removes a felon's ineligibility. The last sentence of Section 921(a)(20) on its face draws no distinction between federal and state convictions or between federal and state restorations of civil rights.

To sustain the government's position in these cases, a court must read into the statute a limitation or qualification that is not expressed in the statutory language. In substance, the government and the court below maintain that the statute should be read as if its text were "Any *state* conviction . . . for which a person . . . has had civil rights restored shall not be considered a conviction for purposes of this chapter." Or, alternatively, they construe the statute as if it read: "Any conviction . . . for which a person . . . has had civil rights restored *by the convicting jurisdiction* shall not be considered a conviction for purposes of this chapter." These implied additions to the statutory language are not permissible under the principles of statutory construction that this Court traditionally applies.



The overriding principle of statutory construction was recently reaffirmed by this Court in its unanimous opinion in *Negonsott v. Samuels*, 113 S. Ct. 1119, 1122-23 (1993) (quoting from *Griffin v. Oceanic Contractors, Inc.*, 458 U.S. 564, 570 (1992)): "Our task is to give effect to the will of Congress, and where its will has been expressed in reasonably plain terms, that language must ordinarily be regarded as conclusive." The Court, speaking through Justice Kennedy, expressed the same principle in slightly different words in *Estate of Cowart v. Nicklos Drilling Co.*, 112 S. Ct. 2589, 2594 (1992): "In a statutory construction case, the beginning point must be the language of the statute, and when a statute speaks with clarity to an issue judicial inquiry into the statute's meaning, in all but the most extraordinary circumstances, is finished." And in *Connecticut Nat'l Bank v. Germain*, 112 S. Ct. 1146, 1149 (1992), the Court, speaking through Justice Thomas, said: "[I]n interpreting a statute a court should always turn first to one, cardinal canon before all others. We have stated time and again that courts must presume that a legislature says in a statute what it means and means in a statute what it says there. When the words of a statute are unambiguous, then, this first canon is also the last: 'judicial inquiry is complete.' " (Citations omitted.) See also *Ardestani v. INS*, 112 S. Ct. 515, 520 (1991) (O'Connor, J.) ("The 'strong presumption' that the plain language of the statute expresses congressional intent is rebutted only in 'rare and exceptional circumstances,' when a contrary legislative intent is clearly expressed." (Citations omitted.)); *Freytag v. Commissioner of Internal Revenue*, 111 S. Ct. 2631, 2636 (1991) (Blackmun, J.) ("When we find the terms of a statute unambiguous, judicial inquiry should be complete except in rare and exceptional circumstances.")

When they considered the issue now facing this Court, the Courts of Appeals for the Eighth and Ninth Circuits concluded that the plain meaning of the concluding sentence of 18 U.S.C. § 921(a)(20) erases the firearms disability of a federal conviction for which an individual has received a restoration of rights under state law. In *United States v. Geyler*, 932 F.2d 1330, 1334 (9th Cir. 1991), the Ninth Circuit said (emphasis original):

> In this case, the meaning of the statutory language is clear. "*Any conviction* . . . for which a person . . . has had civil rights restored" means precisely that. Pursuant to the plain language of § 921(a)(20), a state's restoration of civil rights to a person eliminates the underlying conviction as a predicate offense for purposes of the federal firearms laws, whether the conviction was for a state or federal offense.

And in *United States v. Edwards*, 946 F.2d 1347, 1349 (8th Cir. 1991), a unanimous Eighth Circuit panel said (citation omitted):

> [W]hen the statutory language is clear, we ordinarily need not consult the legislative history. In this case, the statute is unambiguous and the legislative history does not reveal any "clearly expressed legislative intention" contradicting the statutory language; thus, we have no warrant to apply legislative history to vary the plain statutory language.

Only the Fourth Circuit has concluded that the language of the 1986 amendment is not "plain." See Pet. App. 16a-17a. Through strained and untenable reasoning the court rejected the meaning that clearly emerges from the text of the statute (see Pet. App. 16a). See pp. 23-25, *infra*. The Fourth Circuit said that the "plain language" approach of the Eighth and Ninth Circuits "misses the forest for the trees." Pet. App. 17a. The Fourth Circuit, we submit, has lost its way in a forest that it alone perceives.



### A. No Implied Distinction Between State and Federal Convictions Should Be Read Into the Last Sentence of Section 921(a)(20).

The government and the court below maintain that an implied exception should be read into the concluding sentence of Section 921(a)(20). They acknowledge that someone who has been convicted of a state felony is not disabled under the federal gun laws from possessing a firearm if his or her civil rights have been restored by operation of state law. See, *e.g.*, *Bell v. United States*, 970 F.2d 428 (8th Cir. 1992); *United States v. Haynes*, 961 F.2d 50 (4th Cir. 1992); *United States v. Dahms*, 938 F.2d 131 (9th Cir. 1991); *United States v. McBryde*, 938 F.2d 533 (4th Cir. 1991); *United States v. Essick*, 935 F.2d 28 (4th Cir. 1991); *United States v. Gomez*, 911 F.2d 219 (9th Cir. 1990); *United States v. Cassidy*, 899 F. 2d 543 (6th Cir. 1990). They contend, however, that although the words of the statute make no distinction between federal and state convictions, a different rule applies if the predicate conviction is a federal one. This manner of reading a statute—*i.e.*, inserting a qualification that the statute does not explicitly draw—conflicts with the rationale of many recent decisions of this Court, in both criminal and civil contexts, that have resolved issues of statutory construction. And, in particular, it conflicts with the approach that this Court has taken to the language of the federal firearms laws.

(1) *The Most Recent Precedent*—We begin with a very recent precedent, *Smith v. United States*, 113 S. Ct. 2050 (1993). *Smith* was a criminal case in which a question of statutory construction was decided contrary to the theory of statutory interpretation that the government is proposing in this case. This Court held in *Smith* that an accused who traded a machine gun for cocaine could be prosecuted for "using" a firearm while committing a drug trafficking offense. In an opinion by Justice O'Connor, the Court held that the statutory term "use" did not mean

"use as a weapon" because "the words 'as a weapon' appear nowhere in the statute." 113 S. Ct. at 2054. In an observation that applies fully to this case (with the words "the government" substituted for "petitioner"), the Court said, "Had Congress intended the narrow construction petitioner urges, it could have so indicated. It did not, and we decline to introduce that additional requirement on our own." *Id.*

By the same token, Congress could have written the word "state" or the words "by the convicting jurisdiction" into the last sentence of Section 921(a)(20) (see pp. 12-13, *supra*) if it had wished not merely to overrule *Dickerson* but to create a distinction between federal and state convictions in the area of restoration of rights. Congress chose not to do so, and, consistently with the principles of its recent *Smith* decision, this Court should decline to "introduce that additional" qualification on its own.

(2) *Other Recent Rulings*—On many occasions during the past decade this Court has rejected proposed statutory interpretations that depend on the same kind of argument that the government is making here—*i.e.*, the contention that the language used by Congress should be modified by a qualification or condition that Congress failed to state explicitly. The Court has repeatedly turned aside such arguments.

(a) *Union Bank v. Wolas*, 112 S. Ct. 527 (1991)—Because of a 1984 amendment to the Bankruptcy Code, payment on long-term debt made within 90 days of bankruptcy qualified, under the statutory language, as a non-voidable transfer. The bankrupt's creditors presented persuasive reasons why permitting such payments would violate the basic bankruptcy policy of equitable distribution of an estate among the bankrupt's creditors. They claimed that Congress had inadvertently eliminated the statutory language that would have made payments on long-term debt voidable. This Court, in a unanimous opinion by Justice Stevens, refused to read into the



amendment an implied exception for long-term debt (analogous to the implied exception for federal convictions that the government is urging). It relied on "the statutory text—which makes no distinction between short-term debt and long-term debt." 112 S. Ct. at 533. By the same token, Section 921(a)(20) "makes no distinction" between federal and state convictions or between federal and state restoration of rights.

(b) *Freytag v. Commissioner of Internal Revenue*, 111 S. Ct. 2631 (1991)—The Tax Reform Acts of 1984 and 1986 authorized the chief judge of the Tax Court to appoint a "special trial judge" for certain designated cases and for "any other proceeding." The petitioner in *Freytag* maintained that this seemingly broad authorization was actually meant by Congress to cover only "comparatively narrow and minor matters" (analogous to the implied limitation to state convictions that the government reads into Section 921(a)(20)). Speaking for a unanimous Court on the applicable rule of statutory construction, Justice Blackmun said that the statutory language was unambiguous and that courts were not at liberty to create any exception that Congress had declined to write. 111 S. Ct. at 2636.

(c) *Toibb v. Radloff*, 111 S. Ct. 2197 (1991)—Some courts had "engrafted an ongoing business requirement onto" the provision of the Bankruptcy Code that defines the class of persons eligible for reorganization under Chapter 11. 111 S. Ct. at 2200. This Court, speaking through Justice Blackmun, held that "the plain language of the Bankruptcy Code disposes of the question. . . ." 111 S. Ct. at 2199. The Court reviewed the law's legislative history and policy only after noting that there was "no need to do so" because the language of the statute was clear. *Id.* at 2200.

(d) *Norfolk & Western Ry. v. American Train Dispatchers*, 111 S. Ct. 1156 (1991)—The Interstate Commerce Act exempts rail-carrier consolidations approved by

the Interstate Commerce Commission "from all other law." A court of appeals read this exemption as inapplicable to contract liability (analogous to the Fourth Circuit's implied exception in this case for federal convictions), and accordingly held that a collective-bargaining agreement was not exempted by the ICC's approval. This Court, per Justice Kennedy, reversed on the ground that the statutory language "is clear, broad, and unqualified," and that it did not, therefore, "admit of the distinction the Court of Appeals drew, based on its analysis of legislative history, between positive enactments and common-law rules of liability." 111 S. Ct. at 1163. Similarly, the language of Section 921(a)(20) does not "admit of the distinction the Court of Appeals drew" between federal and state convictions.

(e) *Pennsylvania Department of Public Welfare v. Davenport*, 495 U.S. 552 (1990)--The issue before the Court was whether restitution obligations that are conditions of probation in state criminal proceedings are dischargeable "debts" under the Bankruptcy Code. The United States and virtually all State Attorneys General argued that the word "debts" as used in the Code should be read to except criminal restitution orders by implication (analogous to the government's argument in this case that an implied exception for federal convictions should be read into Section 921(a)(20)). In an opinion by Justice Marshall, this Court rejected the argument and concluded that "our sole function is to enforce the statute according to its terms." 495 U.S. at 564.

(f) *United States v. Ron Pair Enterprises, Inc.*, 489 U.S. 235 (1989)—Although the Bankruptcy Code generally authorizes payment of "interest" to the holder of an oversecured claim, a court of appeals qualified that statutory term by allowing post-petition interest only for voluntary or consensual liens (analogous to qualifying the restoration-of-rights provision in Section 921(a)(20) by limiting it to state convictions only). This Court, in an opinion by Justice Blackmun, rejected the implied limitation



with the observation that "[t]he language before us expresses Congress' intent—that postpetition interest be available—with sufficient precision so that reference to legislative history and to pre-Code practice is hardly necessary." 489 U.S. at 241.

(g) *INS v. Cardoza-Fonseca*, 480 U.S. 421 (1987)—The United States argued to this Court that the federal law authorizing asylum for a refugee who cannot return to his country because of "persecution or well-founded fear of persecution" implicitly incorporated the objective test of "clear probability of persecution" that applies elsewhere in the immigration laws (analogous to the argument that the restoration-of-rights clause of Section 921(a)(20) implicitly incorporates an exception for federal convictions). In an opinion by Justice Stevens, this Court rejected that qualification as inconsistent with "[t]he ordinary and obvious meaning of the phrase" used by Congress and with "the plain language of the Act." 480 U.S. at 431, 432.

(h) *Park 'n Fly, Inc. v. Dollar Park and Fly, Inc.*, 469 U.S. 189 (1985)—A court of appeals interpreted the Lanham Act's protection for incontestable federally registered trademarks as impliedly excluding those that are merely descriptive and are invoked offensively to enjoin others' use of the same descriptive mark. (This holding was analogous to the Fourth Circuit's conclusion that Section 921(a)(20) is impliedly inapplicable to federal convictions subject to state restorations of rights.) This Court, in an opinion by Justice O'Connor, said, "One searches the language of the Lanham Act in vain to find any support for the offensive/defensive distinction applied by the Court of Appeals. The statute nowhere distinguishes between a registrant's offensive and defensive use of an incontestable mark." 469 U.S. at 196. The Court also rejected, on grounds of the "plain language" of the Lanham Act, any claim that a descriptive mark may not qualify as incontestable. *Id.* at 196, 197. The same reasoning requires rejection of the government's

proposed federal/state distinction in this case because one searches Section 921(a)(20) "in vain" for such a distinction, and the distinction is inconsistent with the statute's plain language.

(i) *North Dakota v. United States,* 460 U.S 300 (1983)—The Wetlands Act of 1961 authorized the federal government to purchase land for waterfowl habitats if the governor of the state in which the land is located "has . . . approved." North Dakota claimed that the statutory language was qualified by an implied exception if the approval has been withdrawn before acquisition (analogous to the implied exception for federal convictions urged by the government in this case). In an opinion by Justice Blackmun, this Court noted that the statutory language is "uncomplicated" and that "[n]othing in the statute authorizes the withdrawal of approval previously given." 460 U.S. at 312, 313. Nothing in Section 921 (a)(20) authorizes withholding the relief from disabilities granted by that section to someone whose rights have been restored by state law after a federal conviction.

The nine decisions summarized above are all instances in which this Court, speaking through different Justices, has rejected claims that the plain meaning of the words Congress has chosen should be qualified by some condition that a party believes is supported by legislative history or sound reasons of policy. The same approach to statutory construction taken in these nine cases requires rejection of the position taken in the two cases before the Court by the government and by the Fourth Circuit.

(3) *Federal Firearms Cases*—The history of this Court's decisions construing the federal firearms laws confirms the lessons of the cases previously described. The Court has consistently refused to read unexpressed qualifications into the provisions of the Gun Control Act of 1968. It has applied the statutory provisions literally, even if the results in individual cases have seemed extraordinarily harsh.



In each of these instances, to be sure, the literal application of the statutory language has favored the government and has restricted the freedom to possess firearms. But the same principles of statutory construction must apply if the outcome favors gun-holders as would apply if the outcome limits their rights. Neutral principles invoked by this Court in the federal firearms precedents require reversal of the Fourth Circuit's judgments.

(a) *Huddleston v. United States,* 415 U.S. 814 (1974) —In ruling, on behalf of eight Justices of the Court, that redemption of a firearm from a pawnshop amounted to "acquisition" of the firearm within the meaning of the Gun Control Act, Justice Blackmun refused to read the term "acquisition" in any qualified way. He noted that if Congress had intended to exempt redemptive transactions from the reach of the statute, "it would have artfully worded the definition so as to exclude it." 415 U.S. at 822. The Court found "no grievous ambiguity or uncertainty in the language and structure of the Act." 415 U.S. at 831. By the same token, there is "no grievous ambiguity or uncertainty" in the concluding sentence of Section 921(a)(20).

(b) *Barrett v. United States,* 423 U.S. 212 (1976)— The language of the Gun Control Act of 1968 made it a criminal offense for convicted felons to receive any firearm "which has been shipped or transported in interstate or foreign commerce." 18 U.S.C. § 922(h). Consequently, the Court held that an accused whose own transaction was entirely intrastate could be convicted if the gun he possessed had reached the dealer through interstate channels. Justice Blackmun's opinion for the Court majority concluded that the unambiguous language of the law, which contained "no limitation to a receipt which itself is part of the interstate movement" (423 U.S. at 216), compelled the result reached by the Court—notwithstanding dictum in a previous decision of this Court and contrary indications in the legislative history. See Stewart, J., dissenting, 423 U.S. at 228-31.

(c) *Lewis v. United States*, 445 U.S. 55 (1980)—Most notably, this Court's rationale in *Lewis* cannot be reconciled with the government's proposed reading of Section 921(a)(20). The issue in *Lewis* was whether the firearms ineligibility then prescribed by Title VII of the Omnibus Crime Control and Safe Streets Act of 1968 (repealed in 1986 by the FOPA) included felony convictions that were vulnerable to collateral attack under *Gideon v. Wainwright*, 372 U.S. 335 (1963), because the accused was unrepresented by counsel. The statutory language declared that "any person . . . convicted . . . of a felony" was ineligible, and the petitioner argued that an exception should be read into the law for a felony conviction subject to collateral attack. Justice Blackmun's opinion rejecting the implied exception observed that the statute was "directed unambiguously" at anyone who had been convicted, that "[n]o modifier is present, and nothing suggests any restriction on the scope of the term 'convicted,'" and that "[t]he statutory language is sweeping, and its plain meaning" supports a broad reading of the term. 445 U.S. at 60.

All these characteristics appear in the language of Section 921(a)(20). The statute contains no "modifier" of the word "conviction" or of the restoration-of-rights provision. Nothing on the face of the statute limits it to state convictions or restoration of civil rights by the same jurisdiction that generated the conviction. The "sweeping" language—"any conviction" and "had civil rights restored"—and the "plain meaning" of the law both support the conclusion that the statutory provision is unqualified.

In its *Lewis* opinion, the Court also relied on the fact that the statute enumerated exceptions but did not specify the exception that the petitioner was urging. The same is true in these cases. Section 921(a)(20) exempts any restoration of civil rights that "expressly provides that the person may not ship, transport, possess, or receive firearms." While excepting such a limited restoration of rights, Congress did *not* except a state restoration of



rights for a federal offense—an exception that Congress could easily have provided.

(d) *Dickerson v. New Banner Institute, Inc.*, 460 U.S. 103 (1983)—This Court again refused to read into the Gun Control Act any implied limitation when it held that an expunged conviction was, nonetheless, a disabling conviction for purposes of the federal firearms laws. The Court, per Justice Blackmun, held that "[s]o far as the face of the statute is concerned . . . expunction under state law does not alter the historical fact of the conviction, and does not open the way to a license despite the conviction. . . ." 460 U.S. at 114-15. The same reasoning—*i.e.*, reliance on the "face of the statute"—supports our reading of Section 921(a)(20), not the government's.

**B. The Plain Meaning of the Last Sentence of Section 921(a)(20) Is That Petitioners' Federal Convictions Should Not Be Considered in Determining Their Eligibility To Possess Firearms.**

The court of appeals concluded that the "plain meaning analysis" was "compromised" in these cases because a court would have to "stray[] outside the text of the statute" to apply it to the petitioners. See Pet. App. 17a. The court's reasoning is puzzling, and its conclusion is plainly erroneous.

The court said that "restoration of civil rights" is a term that "can admit of several legitimate interpretations." Pet. App. 16a. It maintained that the federal procedure provided in 18 U.S.C. § 925(c) for application to the Secretary of Treasury for relief from firearms disabilities satisfies this definition. The Court also said that more active conduct by state officials than mere restoration by operation of law might be a requirement of Section 921(a)(20). See Pet. App. 16a-17a.

Even if these are possible interpretations of the statute, they do not obviate the fact that the law, by its plain terms, directs that "any conviction" is not to be consid-

ered if the defendant "has had civil rights restored"—presumably in any manner or by any jurisdiction. The specific restorations of rights that the court of appeals describes are not the *only* restorations of rights that the statute contemplates. On this point, the plain meaning of the law is clear. It covers every person who "has had civil rights restored"—not merely those whose firearms disabilities have been relieved under 18 U.S.C. § 925(c) or by some active formal state certification, finding or declaration.

Moreover, the relief provided by 18 U.S.C. § 925(c) is not truly a "restoration of civil rights." It is, rather, a means by which the federal statutory disability governing firearms ownership or possession may be removed. A considerable number of States have provisions of local law similar to Section 925(c), in addition to provisions that generally "restore civil rights." Consequently, to read 18 U.S.C. § 925(c) as a federal restoration-of-rights law does not square with its language or with its commonly accepted description. In fact, there is no federal statute that restores civil rights lost by a federal felon. It makes good sense, therefore, to read the concluding sentence of Section 921(a)(20) as a reference to *state* restoration-of-rights laws.

Nor was the Fourth Circuit correct in assuming that special "congressional knowledge" on any subject was required for the Eighth and Ninth Circuits to apply the plain meaning of the law to the individuals in the cases before them. Pet. App. 16A-17A. Both of these courts of appeals looked first to the plain language of the law. In their opinions, they also went beyond the language and tried to discern the probable intent of Congress. In this regard they considered whether there exists any federal restoration-of-rights law apart from the process described in 18 U.S.C. § 925(c). That inquiry—and the conclusion that there is no such federal law—did not mean that they were abandoning the plain meaning analysis or



diminishing the impact of the straightforward language of Section 921(a)(20).

### C. The Plain Meaning of the Statute Is Unaffected by What This Court Believes Congress Should Have Done.

In this particular area of federal law, there is substantial public debate and sensitivity. Many believe that a federal law should limit, as much as possible, the number of individuals who may lawfully possess firearms. And there are, of course, legitimate policy reasons why Congress might choose to deny firearm ownership to persons who have been convicted of serious crimes, regardless of the treatment the law affords such individuals with respect to other civil rights.

In his dissent in *Barrett v. United States*, 423 U.S. 212, 228 (1976), Justice Stewart observed that the possession of a handgun by the petitioner in that case was "offensive to those who believe in law and order" and was "particularly offensive to those concerned with the need to control handguns." Nonetheless, he warned against a "rush to judgment" that would convict someone who was not truly within the reach of the federal criminal statute.

These cases present similar concerns. This Court may feel that control of firearms warrants the imposition of severe restrictions under federal law. Indeed, the Court may find it difficult to believe that the Congress that enacted the FOPA in 1986 would have permitted federal felons to possess firearms merely because they lived in States where their civil rights were restored. Nonetheless, the Court's duty is to enforce the law as written.

Justice Marshall's caution in *United States v. Locke*, 471 U.S. 84, 95-96 (1985), is applicable here (citations omitted):

> [T]he fact that Congress might have acted with greater clarity or foresight does not give courts a *carte blanche* to redraft statutes in an effort to

> achieve that which Congress is perceived to have failed to do. "There is a basic difference between filling a gap left by Congress' silence and rewriting rules that Congress has affirmatively and specifically enacted." Nor is the Judiciary licensed to attempt to soften the clear import of Congress' chosen words whenever a court believes those words lead to a harsh result. On the contrary, deference to the supremacy of the Legislature, as well as recognition that Congressmen typically vote on the language of a bill, generally requires us to assume that "the legislative purpose is expressed by the ordinary meaning of the words used."

What the government is requesting in these cases is a revision of the applicable statute, not a construction of ambiguous terms. Justice Brandeis rejected a similar government request with regard to a plain and unambiguous statute in *Iselin v. United States*, 270 U.S. 245, 250-51 (1926), quoted in *West Virginia Univ. Hosp., Inc. v. Casey*, 499 U.S. 83, 101 (1991):

> What the Government asks is not a construction of a statute, but, in effect, an enlargement of it by the court, so that what was omitted, presumably by inadvertence, may be included within its scope. To supply omissions transcends the judicial function.

See also *Union Bank v. Wolas*, 112 S. Ct. 527, 533 (1991) ("Whether Congress has wisely balanced the sometimes conflicting policies underlying § 547 is not a question that we are authorized to decide.")

In *Estate of Cowart v. Nicklos Drilling Co.*, 112 S.Ct. 2589, 2598 (1992), Justice Kennedy concluded this Court's opinion with observations that apply fully to this case:

> Congress has spoken with great clarity to the precise question raised by this case. It is the duty of the courts to enforce the judgment of the Legislature, however much we might question its wisdom or fairness. Often we have urged the Congress to speak with greater clarity, and in this statute it has done so. If the effects of the law are to be alleviated, that is within the province of the Legislature. It is Congress that has the authority to change the statute, not the courts.



Speaking for the Court, Justice Ginsburg recently made this precise point. Acknowledging that the United States had demonstrated "substantial concerns" supporting a proposed construction of a federal statute that was inconsistent with its language, Justice Ginsburg said that policy concerns cannot be given "dispositive weight" because "[t]he insurers' views have been presented to Congress and that body can adjust the statute." *John Hancock Mut. Life Ins. Co. v. Harris Trust & Sav. Bank*, 62 U.S.L.W. 4025, 4032 (U.S. Dec. 13, 1993) (footnote omitted).

### D. The Penultimate Sentence of Section 921(a)(20) Does Not Affect the Plain Meaning of the Last Sentence.

We turn, finally, in considering the plain meaning of the 1986 amendment, to the argument that the government has made in the various courts of appeals and may be expected to make here. The government claims that the penultimate sentence of Section 921(a)(20) is a Congressional directive that, for purposes of the next sentence, only federal restoration of rights may negate federal convictions. This argument was rejected even by Circuit Judge Fletcher, who dissented from the Ninth Circuit's ruling in *United States v. Geyler*, 932 F.2d 1330, 1337 (9th Cir. 1991), although she accepted the proposition that the earlier sentence "must inform" the reading of the term "any conviction." Nor was it accepted by the Fourth Circuit, which supplied its own reasons for reading the final sentence of Section 921(a)(20) in a qualified manner.

The government's argument is unsound for two reasons. *First*, the language of the penultimate sentence does not support the meaning the government gives to it. That sentence directs how the Court is to determine "[w]hat constitutes a conviction." It is the next sentence, not the penultimate one, that describes when an acknowledged conviction is to "be considered a conviction for purposes of this chapter."

*Second*, it is clear, in the context of earlier federal firearms cases, that the earlier sentence is directed to the first of this Court's two holdings in *Dickerson*—*i.e.*, whether a particular court judgment is to be considered a "conviction" at all under the federal firearms laws. In *Dickerson*, all the Justices, including the four who dissented from the Court's reversal, agreed that federal law controlled the issue whether the state's judgment was a "conviction" for federal gun control purposes. 460 U.S. at 111-12 (majority opinion), 123 (dissent). Congress squarely overruled that unanimous ruling in the FOPA when it declared in the penultimate sentence that "[w]hat constitutes a conviction of such a crime shall be determined in accordance with the law of the jurisdiction in which the proceedings were held." 18 U.S.C. § 921 (a)(20).

That Congressional directive did not, however, tell the courts what effect is to be given to a "conviction" that has been the subject of expunction, reversal, pardon, or restoration of rights. The concluding sentence of the 1986 amendment separately instructed how to deal with such subsequent events. The earlier sentence does not, therefore, control the sentence that follows it.

In *Negonsott v. Samuels*, 113 S. Ct. 1119 (1993), an argument similar to the government's was made and rejected by this Court. In that case, the petitioner argued that the second sentence of the Kansas Act deprived the State of Kansas of jurisdiction to try him under the Act's first sentence for offenses covered by the Indian Major



Crimes Act committed on an Indian reservation. This Court held that the unambiguous provision of the first sentence, which gave Kansas jurisdiction "to prosecute all offenses—major and minor—committed by or against Indians on Indian reservations in accordance with state law" (113 S. Ct. at 1123), was not limited by the second sentence. If the second sentence limited the first, said the Court, that result would "hardly be reconciled with the first sentence's unqualified grant of jurisdiction to Kansas to prosecute all state-law offenses committed by or against Indians on Indian reservations." *Id.*

By the same token, if the government's interpretation of the penultimate sentence of Section 921(a)(20) were accepted, it could not be reconciled with the unqualified terms of the second sentence. Neither its language nor its context supports the government's position.

## II. THE LEGISLATIVE HISTORY OF THE 1986 AMENDMENTS IS SILENT ON THE ISSUE AND FAILS TO ESTABLISH ANY "CLEARLY EXPRESSED LEGISLATIVE INTENTION" CONTRARY TO THE LAW'S PLAIN MEANING

This Court's decisions authorize examination of legislative history only to determine "whether there is 'clearly expressed legislative intention' contrary" to the plain language of the law. *INS v. Cardoza-Fonseca*, 480 U.S. 421, 432 n. 12 (1987) (Stevens, J.). See also *Ardestani v. INS*, 112 S. Ct. 515, 520 (1991) (O'Connor, J.); *United States v. James*, 478 U.S. 597, 606 (1986) (Powell, J.); *United States v. Locke*, 471 U.S. 84, 95-96 (1985) (Marshall, J.); *Consumer Product Safety Comm'n v. GTE Sylvania*, 447 U.S. 102, 108 (1980) (Rehnquist, J.).

The legislative history of the 1986 amendment to Section 921(a)(20) fails totally to meet that established standard. The most one may conclude from it, as the Ninth Circuit said in *United States v. Geyler*, 932 F.2d

1330, 1335 (9th Cir. 1991), is "that Congress quite likely never gave any specific thought to the problem of a state restoring a federal felon's civil rights when it enacted the federal firearms statute." And the Eighth Circuit determined from its review of the legislative history in *United States v. Edwards*, 946 F.2d 1347, 1349 (8th Cir. 1991), that it "does not specifically discuss the situation we have here (of a state restoration of rights law exempting a federal felon from section 922(g))." The court of appeals concluded, however, that "[a]lthough the legislative history does not discuss the effect of state law restorations of civil rights on federal felons, it does dispel the government's argument that the last two sentences of section 921(a)(20) are parts of a single idea and that the term 'restoration of civil rights' must be limited by the language in the preceding sentence about the 'law of the jurisdiction in which the proceedings were held.'" 946 F.2d at 1349-50.

### A. The Overriding Congressional Objective of the FOPA Was To Enhance, Not Diminish, the Rights of Gun Owners.

Unlike earlier federal gun control laws, the 1986 federal firearms statute was designed to enlarge rights of gun owners. The title of the law—Firearms Owners' Protection Act—is itself an indication of its purpose. The Congressional findings on which the law was based included the reaffirmation of the constitutional rights to keep and bear arms and to be secure against unreasonable search and seizure. Pub. L. No. 99-308, 100 Stat. 449 (1986). Congress explicitly reaffirmed the finding made in 1986 that it did not wish "to place any undue or unnecessary federal restrictions or burdens on law-abiding citizens with respect to the acquisition, possession, or use of firearms. . . ." *Id.* Section 1(b)(2) of the FOPA declared that "additional legislation is required to reaffirm" this intent of Congress.



### B. The Senate and House Reports Do Not Support Any Federal/State Distinction in Application of the Restoration-of-Rights Provisions.

Between 1982 and 1986, three committee reports were presented on the subject of pending amendments to the federal firearms laws. Only one report, H.R. Rep. No. 495, 99th Cong., 2d Sess. (1986), was issued during the Congressional session in which the FOPA was enacted. Its use as legislative history for the FOPA is extremely limited, however, since the report actually accompanied H.R. 4332, a bill endorsed by the FOPA's opponents. "[T]he report explains not why FOPA should have been adopted, but rather, why it ought to have been *rejected*." Hardy, *The Firearm Owners' Protection Act: A Historical and Legal Perspective*, 17 Cumb. L. Rev. 585, 588 (1987) (emphasis in original). See *Pierce v. Underwood*, 487 U.S. 552, 566-67 (1988) (recognizing extremely limited use of a committee report analyzing meaning of a statute the committee did not even draft).

The bill that ultimately became the FOPA was introduced in the Ninety-Ninth Congress as S. 49. The House Report enumerates "negative aspects of S. 49" by reprinting an assessment of the FOPA prepared by the Bureau of Alcohol, Tobacco and Firearms. This report criticizes both the "Relief from Disabilities" provision and the "Definition of Conviction" provision contained in S. 49. H.R. Rep. No. 495, 99th Cong., 2d Sess. 19-20 (1986).

With regard to the definition of conviction, the only reference that relates, even peripherally, to the issue now before the Court in the House Report says (H.R. Rep. No. 495, 99th Cong., 2d Sess. 20 (1986)):

> The bill provides that what constitutes a felony conviction would be determined by the law of the jurisdiction where the conviction occurred. This would require the Bureau to examine the peculiar laws of each State to determine whether a person is convicted for Federal purposes. Further, any con-

> viction which has been expunged or pardoned would not be considered a disabling offense under GCA. Under present law, State pardons and State court proceedings which set aside a plea or verdict of guilty upon a successful completion of probation do not eliminate the underlying conviction insofar as Federal Law is concerned and such a person must still apply for and receive relief from Federal firearms disabilities.

It appears from the House Report that neither the FOPA's opponents nor its supporters read the bill as providing anything other than identical treatment to federal and state convictions that were affected by the operation of state law. At no point in the Report was it suggested that federal convictions would be treated differently from state convictions for purposes of any restoration-of-rights or relief-from-disabilities provisions. Nor was it suggested at any time that the provision regarding the definition of conviction—the penultimate sentence of Section 921(a)(20)—had any bearing upon the interpretation of the last sentence, which described the convictions that were not to be considered as convictions under the federal firearms laws.

The earlier Senate Reports also provide no support whatever for the government's position—much less any "clearly expressed legislative intention" that federal convictions are to be unaffected by state restorations of civil rights. The Senate Report that accompanied the initial version of the FOPA introduced as S. 1030 in the Second Session of the Ninety-Seventh Congress began with the statement of the Judiciary Committee majority that the bill's purpose was "to protect firearms owners' constitutional rights, civil liberties, and rights to privacy." S. Rep. No. 476, 97th Cong., 2d Sess. 1 (1982).

From the time S. 1030 was first reported out of the Senate Judiciary Committee it contained substantially the amendment to Section 921(a)(20) that ultimately was



enacted in the FOPA and that is the subject of these cases. The Senate Report explained the reason for the last sentence of the then-proposed Section 921(a)(20) as follows (S. Rep. No. 476, 97th Cong., 2d Sess. 18 (1982)):

> S. 1030 would also exclude from such convictions any for which the person has received a pardon, civil rights restoration, or expungement of the record. Existing law incorporates a similar provision as to pardons in 18 U.S.C. section 1202, relating to possession of firearms, but through oversight does not include such provision in 18 U.S.C. section 922, dealing with their purchase or receipt. This oversight has resulted in a ruling that a state pardon does not permit a pardoned citizen to receive or purchase a firearm, despite the express provision that he may possess it. *Thrall v. Wolfe*, 503 F.2d 318 (7th Cir. 1974). This change would remove that anomaly. . . .

The same explanation—almost *in haec verba*—appeared in the Senate Report that accompanied the Ninety-Eighth Congress' version of the Firearm Owners' Protection Act. S. Rep. No. 583, 98th Cong., 2d Sess 7 (1984). Since the 1984 Report was issued after this Court's *Dickerson* decision, however, the Judiciary Committee's explanation of the penultimate sentence in the then-proposed Section 921(a)(20) contained a footnote that referred specifically to *Dickerson* (*id.* at p. 7, n. 16);

> For instance, the Supreme Court, in *Dickerson v. New Banner Institute, Inc.*, 103 S. Ct. 986 (1983), construed this definition to include guilty pleas where no final judgment had been rendered by the Court. S. 914, as reported, would leave such a determination to the states and would render the *Dickerson* decision inapposite where individual State courts or legislatures have decided to the contrary.

There was no discussion on either the House or Senate floor regarding the amendment to Section 921(a)(20). The only reference to it is in a "fact sheet" presented by

Senator Hatch during the Senate debate (131 Cong. Rec. 18179 (1985)):

> The Protection Act provides that a person convicted of a felony who secures a pardon, restoration of civil rights, or whose record has been expunged is no longer considered a felon for the purposes of possessing firearms—courts have held this not true under existing law.

This summary, like the explanations in the Congressional reports, does not distinguish between federal and state convictions or between federal and state restorations of rights. Rather than demonstrating a "clearly expressed legislative intention" that is contrary to the literal meaning of Section 921(a)(20), it shows a legislative intention consistent with the plain understanding of the statutory language. A person convicted of *any* felony—state or federal—may possess or receive firearms if his rights have been resorted by *any* law—state or federal.

### C. There Is No Sound Policy Reason Why Federal Felons Should Face Greater Obstacles in Overcoming Firearms Disabilities than State Felons.

We turn, in this regard, finally to the question whether Congress would have wanted to distinguish, for purposes of firearms ineligibility, between federal and state felons. We submit that no sound policy justifies such a distinction. Indeed, to the extent that there is a difference in this respect, Congress had *more* reason permanently to disqualify state felons than permanently to disqualify federal felons.

Apart from narcotics offenders (many of whom are covered, in any event, by the ineligibility of narcotics users provided in Section 922(g)(3)), a significant percentage of federal felons are "white-collar" criminals. Those who commit antitrust violations or business crimes are exempted by Section 921(a)(20)(A), but that limited statutory exception does not cover fraud, embezzlement,



tax evasion, or similar non-violent offenses. See *United States v. Meldish*, 722 F.2d 26 (2d Cir. 1983), *cert. denied*, 465 U.S. 1101 (1984) (holding that fraudulent customs declaration was not unfair trade practice within meaning of 18 U.S.C. § 921(a)(20)). There is obviously less risk to public safety if "white collar" offenders possess weapons than if perpetrators of violent crimes usually prosecuted under state law are permitted to carry firearms.

Is it reasonable to assume that Congress intended that individuals who commit violent crimes but have been restored the right to vote or to serve as jurors should be permitted to possess firearms while tax evaders or violators of the customs laws whose rights have been similarly restored should forever be denied the right to own a gun? We submit that sound policy could at least as easily dictate the opposite result—*i.e.*, that there be no firearms authorization for state felons, regardless of their restoration of rights to vote or serve on juries, while authorization to carry weapons be liberally granted to federal felons who are restored by a state to their full civil rights.

It is, of course, difficult to quarrel with the general "purpose of the statute" defined by the court below—*i.e.*, "to keep guns out of the wrong hands" (Pet. App. 20a). The more probing question, however, is what "hands" Congress believed to be "wrong." And on this score, we submit that Congress would more rationally have viewed felons convicted of violent crimes in state courts as "wrong" possessors of firearms than those convicted of non-violent crimes in federal courts.

Finally, the concern expressed by the court below regarding the possibility of "confusion" or of a "civil rights bath" if a state's restoration-of-rights law were to affect a federal felony conviction (Pet. App. 21a) is not a reason to qualify Section 921(a)(20) as the Fourth Circuit seeks to do. The anomalous result hypothesized by the court of appeals would not be cured by distinguishing between federal and state convictions. It relates, rather, to

whether the law of a defendant's residence or of the state of his conviction controls.

If the residence of the felon determines whether he is still disqualified from possessing firearms, the same seemingly dissonant result that the court of appeals hypothesized in its opinion would follow even if the original conviction were in a state court. Any felon living in a State other than the one where he was convicted of a state or federal felony could claim that his firearms eligibility is determined by the restoration-of-rights law of the jurisdiction where he resides, even if no restoration of rights were authorized in the State where he was convicted.

## III. THE "RULE OF LENITY" PRECLUDES ANY INTERPRETATION OF SECTION 921(a)(20) THAT CONFLICTS WITH ITS LITERAL MEANING

A concluding consideration that requires reversal of the Fourth Circuit's decision is the "rule of lenity" that governs the construction of criminal statutes. In this case, as was true in *United States v. Thompson/Center Arms Co.*, 112 S. Ct. 2102, 2110, (1992) (Souter, J.), the "rule of lenity" simply seals a result that is warranted by the statutory language and by the legislative history. *Thompson* was a firearms case involving an unclear statute in which the Court, citing *Crandon v. United States*, 494 U.S. 152, 169 (1990), applied the rule of lenity to hold an excise tax inapplicable to short-barrelled rifles. Because the statutory provision was a part of the National Firearms Act, which carries criminal penalties, the rule of lenity was applied. The warning given by the Court in the *Crandon* opinion should be borne in mind (494 U.S. at 160):

> Because construction of a criminal statute must be guided by the need for fair warning, it is rare that legislative history or statutory policies will support a construction of a statute broader than that clearly warranted by the text.



In *Dowling v. United States*, 473 U.S. 207, 213 (1985), the Court quoted the rule of statutory interpretation applicable to criminal cases set out in *Williams v. United States*, 458 U.S. 279, 290 (1982), that quoted from *United States v. Bass*, 404 U.S. 336, 347 (1971), that had, in turn, quoted from *United States v. Universal C.I.T. Credit Corp.*, 344 U.S. 218, 221-22 (1952):

> [W]hen choice has to be made between two readings of what conduct Congress has made a crime, it is appropriate, before we choose the harsher alternative, to require that Congress should have spoken in language that is clear and definite.

Congress has surely not said, "in language that is clear and definite," that a person convicted of a felony in a federal court whose civil rights have been restored by state law may not possess a firearm. Neither petitioner Beecham nor petitioner Jones had any reason to think from the language of Section 921(a)(20) that after their rights were restored by state law they could not possess a firearm and were prevented from answering "no" to the question whether they had a felony conviction.

To be sure, the rule of lenity "cannot dictate an implausible interpretation of a statute, nor one at odds with the generally accepted contemporary meaning of a term." *Taylor v. United States*, 495 U.S. 575, 596 (1990). That was the reason why the rule of lenity was held inapplicable in *Smith v United States*, 113 S. Ct. 2050, 2059-60 (1993). In the *Smith* case the statutory language was, as we have previously noted (pp. 15-16, *supra*), entirely unqualified. Accordingly, this Court applied the plain meaning of the statutory words and rejected the argument that the rule of lenity justified a narrowing interpretation.

The rule of lenity applies, however, when there is "statutory ambiguity." *Moskal v. United States*, 498 U.S. 103, 107 (1990). This Court has further defined the rule as governing "situations in which a reasonable doubt per-

sists about a statute's intended scope even after resort to 'the language and structure, legislative history, and motivating policies' of the statute." *Id.*, quoting from *Bifulco v. United States,* 447 U.S. 381, 387 (1980).

For reasons previously stated in this brief, we believe that the language, structure, legislative history and policies of the FOPA all require that there be no distinction between federal and state convictions that are subject to state restoration of rights. But whatever may be said of our analysis, it is clearly and unmistakably true that Section 921(a)(20) does not unambiguously reject it. It does not put potential gun-owners on notice of the opposite result—*i.e.*, that if they have been convicted in federal courts their state restorations of rights are ineffective to remove their ineligibility. To the extent, therefore, that the government contends that the court of appeals' construction is a proper reading of Section 921(a)(20), the statutory language is, at least, "ambiguous." The rule of lenity—which rests on the concept of fair warning—is, therefore, applicable and precludes the conviction of the petitioners.

## IV. REVERSAL OF THE COURT OF APPEALS LEAVES REMAINING ISSUES FOR THE FOURTH CIRCUIT ON REMAND

On the basis of its construction of Section 921(a)(20), the court of appeals reversed the dismissal of petitioner Jones' indictment and reversed the entry of a judgment of acquittal in petitioner Beecham's case. If, as we contend, the court of appeals' reading of Section 921(a)(20) was wrong, the judgments in both cases must be reversed and the cases remanded for possible consideration of issues that the court below did not reach.



### A. The Court of Appeals May Decide Which State's Restoration-of-Rights Law Governs.

In the *Beecham* case, the district court considered whether the restoration-of-rights law contemplated by Section 921(a)(20) is the law of the State where the conviction occurred or that of the State in which the convicted felon resides. The district judge concluded that in Beecham's case, the law of Tennessee controls. J.A. 13-14.

The applicable Tennessee statute, Tenn. Code Ann. § 40-29-101(a) (1990), declares:

> (a) Persons rendered infamous or deprived of the rights of citizenship by the judgment of any state or federal court may have their full rights of citizenship restored by the circuit court.

Any person convicted in Tennessee, whether in a state or federal court, prior to July 1, 1986, may petition to the circuit court for a restoration of his rights under § 40-29-102. The next statutory section prescribes that notice be given to the United States Attorney in the case of any such petition relating to a federal conviction.

By contrast, the law of North Carolina makes restoration of civil rights automatic. N.C. Gen. Stat. § 13-1 (1992) declares:

> Any person convicted of a crime, whereby the rights of citizenship are forfeited, shall have such rights automatically restored upon the occurrence of any one of the following conditions:
>
> * * * *
>
> (4) With regard to any person convicted of a crime against the United States, the unconditional discharge of such person by the agency of the United States having jurisdiction of such person, the unconditional pardon of such person or the satisfaction by such person of a conditional pardon.

It is clear that *both* the Tennessee and North Carolina laws restore rights for federal convictions. The court of appeals did not, however, decide *which* law controls or, indeed, whether a defendant may claim the benefit of either law that restores his rights.

Nor did it do so in petitioner Jones' case. The applicable Ohio law (Ohio Rev. Code Ann. § 2961.01 (Anderson 1993)) and the West Virginia procedure for restoring civil rights through issuance of a certificate of discharge are less explicit in their coverage. However, the "Official Certificate of Discharge" received by Jones from the State of West Virginia restoring "any or all civil rights heretofore forfeited" (J.A. 22) has been held to be a sufficient instrument to restore civil rights within the meaning of Section 921(a)(20). *United States v. Haynes*, 961 F.2d 50, 53 (4th Cir. 1992); *United States v. Ball*, No. 90-5363, 1992 U.S. App. LEXIS 5238 (4th Cir. 1992) (unreported). Whether Jones' receipt of that certificate is sufficient or whether Ohio's procedure must be followed is a question that the court of appeals did not reach and that is open on remand.

**B. The Court of Appeals May Decide Issues of Construction Relating to the Applicable State Laws.**

In a footnote to its *Jones* opinion, the Fourth Circuit stated that it was not considering West Virginia law "to determine whether the state's restoration scheme was intended to cover federal felons." Pet. App. 15a, n. 5. That issue is, of course, not before this Court and may be open on remand. As stated above, however, the Fourth Circuit, in *Haynes* and *Ball*, has already held West Virginia's Certificates of Discharge sufficient to remove firearms disabilities under federal law. Both opinions note that although West Virginia law now contains a specific prohibition on firearms possession by a convicted felon (W. Va. Code § 61-7-7 (1989)), that section was not effective at the time that the civil rights of those defendants were restored. *Haynes*, 961 F.2d at 53; *Ball*, 1992



U.S. App. LEXIS 5238, at *6 n.2. The same is true for Jones.

**C. The Court of Appeals May Decide Other Issues.**

The district judge entered a "judgment of acquittal" after the jury's verdict in the *Beecham* case because he found that the prosecution had failed to prove an element of the offense—*i.e.*, that Beecham had a felony conviction within the meaning of the federal firearms laws. J.A. 16. In this regard, the district court relied on a Fourth Circuit opinion that had held that it was the prosecution's burden to establish that the defendant had a felony conviction that could be considered a predicate conviction under 18 U.S.C. § 922(g). J.A. 15-16.

The court of appeals did not consider the burden-of-proof issue because it reversed the district court on the basis of its *Jones* decision. On remand, that issue might be open for consideration by the lower court.

On the other hand, petitioner Beecham may contend on remand that since a judgment of acquittal was entered by the district court because the prosecution's proof was inadequate, any issues relating to proof (as contrasted with the issue of statutory construction that is before this Court) cannot be the subject of a government appeal under 18 U.S.C. § 3731 and this Court's decision in *United States v. Martin Linen Supply Co.*, 430 U.S. 564 (1977). Moreover, the limited appeal that the government took may have waived any other issues.

## CONCLUSION

For the foregoing reasons, the judgments entered by the court of appeals in both the *Beecham* and *Jones* cases should be reversed and the cases remanded to the court of appeals.

Respectfully submitted,

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# APPENDICES

## APPENDIX A

## INDEX OF STATE STATUTES AND CONSTITUTIONAL PROVISIONS SUSPENDING CIVIL RIGHTS OF CONVICTED FELONS

### I. STATE ENACTMENTS SUSPENDING ALL CIVIL RIGHTS OF CONVICTED FELONS

FLORIDA

Fla. Stat. Ann. § 944.292 (West (1985). Suspension of civil rights.

IDAHO

Idaho Code § 18-310(1) (1949 & Supp. 1993). Imprisonment—Effect on civil rights and offices.

NEW YORK

N.Y. Civ. Rights Law § 79(1) (McKinney 1992). Forfeiture of office and suspension of civil rights.

OKLAHOMA

Okla. Stat. Ann. tit. 21, § 65 (West 1983). Civil rights suspended.

### II. STATE ENACTMENTS DISQUALIFYING CONVICTED FELONS FROM VOTING

ALABAMA

Ala. Const. art. VIII § 182. Certain persons disqualified from registering and voting.

ALASKA

Alaska Const. art. V, § 2. Disqualifications.

Alaska Stat. § 15.05.030 (1962). Loss and restoration of voting rights.

ARIZONA

Ariz. Const. art. VII, § 2. Qualifications of voters; disqualification.

Ariz. Rev. Stat. Ann. § 16-101(A)(5) (1956 & Supp. 1993). Qualifications of registrant; definition.

ARKANSAS

Ark. Const. art. 3, § 1. Qualifications of electors—Equal suffrage—Poll tax.

CALIFORNIA

Cal. Const. art. 2, § 4. Improper practices; certain persons as electors; prohibition.

COLORADO

Colo. Const. art. VII, § 10. Disfranchisement during imprisonment.

CONNECTICUT

Conn. Gen. Stat. § 9-46 (West 1989). Forfeiture of electoral rights.

DELAWARE

Del. Const. art. V, § 2. Qualifications for voting; members of the Armed Services of the United States stationed within State; persons disqualified; forfeiture of right.

Del. Code Ann. tit. 15, § 1701 (1974). Qualifications for registration as qualified voter.

FLORIDA

Fla. Const. art. VI, § 4(a). Disqualifications.

Fla. Stat. Ann. § 97.041(3)(b) (West 1982 & Supp. 1993). Qualifications to register or vote.



GEORGIA

Ga. Code Ann. § 21-2-219(a)(5)(a.1)(1) (1993). Qualifications of voters generally; reregistration of voters purged from list; eligibility of voters who reside in another state but are ineligible to vote there; false statements.

Ga. Code § 21-3-133(a)(2) (1993). Purging of list of electors by municipalities maintaining their own registration system; notice to voter of disqualification; request by voter for continuance of registration.

HAWAII

Haw. Const. art. II, § 2.

IDAHO

Idaho Const. art. VI, § 3. Disqualification of certain persons.

Idaho Code § 34-402 (1949 & Supp. 1993). Qualifications of electors.

ILLINOIS

730 ILCS 5/3-5 (Smith-Hurd 1993). Convicts.

INDIANA

Ind. Const. art III, § 8. Conviction of infamous crime.

IOWA

Iowa Const. art. II, § 5. Disqualified persons.

KANSAS

Kan. Const. art. 5, § 2. Disqualification to vote.

KENTUCKY

Ky. Const. § 145(1). Persons entitled to vote.

Ky. Rev. Stat. Ann. § 116.025(2) (Michie/Bobbs-Merrill 1993). Eligibility to vote.

LOUISIANA

La. Rev. Stat. Ann. § 18:1303 (West 1979 & Supp. 1993). Persons entitled to vote in compliance with this Chapter.

MARYLAND

Md. Const. art. I, § 4. Right to vote of persons convicted of certain crimes and persons under guardianship.

Md. Code Ann., Elec. art. 33, § 3-4(c) (1957). Qualifications.

MINNESOTA

Minn. Const. art. VII, § 1. Eligibility: place of voting; ineligible, persons.

MISSISSIPPI

Miss. Const. art. 12, § 241.

MISSOURI

Mo. Const. art. VII, § 2. Qualifications of voters—disqualifications.

Mo. Ann. Stat. § 561.026 (Vernon 1970 & Supp. 1993). Disqualification from voting and jury service.

MONTANA

Mont. Const. art. VI. § 2. Qualified elector.



NEBRASKA

Neb. Const. art. VI, § 2. Who disqualified.

Neb. Rev. Stat. § 29-112 (1989). Convicts; disqualified as electors, jurors, officeholders; warrant of discharge; effect.

Neb. Rev. Stat. § 29-113 (1989). Convicts of other states; disqualified as electors, jurors, officeholders; general pardon; effect.

Neb. Rev. Stat. § 32-1048 (1988). Persons disqualified from voting; exceptions.

NEVADA

Nev. Const. art. 2, § 1. Right to vote; qualifications of elector; qualifications of nonelector to vote for President and Vice President of the United States.

NEW HAMPSHIRE

N.H. Const. pt. 1, art. 11. Elections and Elective Franchises.

NEW JERSEY

N.J. Const. art. 2, § 7. Persons denied right of suffrage, conviction of crime; restoration of right.

N.J. Stat. Ann. § 19:4-1(6)(8) (West 1989). Constitutional qualifications; persons not having right of suffrage; right to register.

N.J. Rev. Stat. § 2C:51-3 (1982). Voting and jury service.

NEW MEXICO

N.M. Const. art. VII, § 1. Qualifications of voters; absentee voting; school elections; registration.

N.M. Stat. Ann. § 31-13-1(A) (Michie 1978). Effect of criminal conviction upon civil rights; governor may pardon or grant restoration of citizenship.

NEW YORK

N.Y. Const. art. 2, § 3. Persons excluded from the right of suffrage.

N.Y. Elec. Law § 5-106(2)(4) (McKinney 1978 & Supp. 1994). Qualifications of voters; reasons for exclusion.

NORTH CAROLINA

N.C. Const. art. 6, § 2(3). Qualifications of voter.

N.C. Gen. Stat. § 163-55(2) (1991). Qualifications to vote; exclusion from electoral franchise.

NORTH DAKOTA

N.D. Const. art. II, § 2.

OHIO

Ohio Const. art. V, § 4. Forfeiture of elective franchise.

Ohio Rev. Code Ann. § 2961.01 (Anderson 1993). Civil Rights of convicted felons.

OKLAHOMA

Okla. Stat. Ann. tit. 26, § 4-101 (West 1991). Persons entitled to become registered voters—Exceptions.

OREGON

Or. Const. art. II, § 3. Rights of certain electors.

RHODE ISLAND

R.I. Const. art. II, § 1. Persons entitled to vote.

SOUTH CAROLINA

S.C. Const. art. II, § 7. Disqualifications by reason of mental incompetence or conviction of crime.

S.C. Code Ann. § 7-5-120. (Lawyer's Co-op. 1991). Qualifications for registration; persons disqualified.



SOUTH DAKOTA

S.D. Const. art. VII, § 2. Voter qualification.

S.D. Codified Laws Ann. § 23A-27-35 (1988). Suspension of civil rights on sentence to penitentiary—Prisoner as witness—Restoration of rights on suspension or termination of sentence.

TENNESSEE

Tenn. Const. art. I, § 5. Elections to be free and equal—Right of suffrage.

TEXAS

Tex. Const. art. XVI, § 2. Exclusions from office, jury service and right of suffrage; protection of right of suffrage.

Tex. Elec. Code § 11.002 (West 1986 & Supp. 1994). Qualified voter.

UTAH

Utah Const. art. IV, § 6. Mentally incompetent persons and certain criminals ineligible to vote.

VIRGINIA

Va. Const. art. II, § 1. Qualifications of voters.

WASHINGTON

Wash. Const. art. VI, § 3. Who Disqualified.

WEST VIRGINIA

W.Va. Const. art. IV, § 1. Elections and Officers.

W.Va. Code § 3-1-3 (1990). Persons entitled to vote.

WISCONSIN

Wis. Const. art. III, § 2(4)(a). Implementation.

Wis. Stat. Ann. 6.03(1)(b) (West 1986 & Supp. 1993). Disqualification of electors.

WYOMING

Wyo. Const. art. 6, § 6. What persons excluded from franchise.

## III. STATE ENACTMENTS DISQUALIFYING CONVICTED FELONS FROM HOLDING PUBLIC OFFICE/OFFICE OF HONOR, TRUST, OR PROFIT [1]

ALABAMA

Ala. Const. art. IV, § 60. Conviction of certain crimes bar to eligibility for legislature and to holding state office of trust or profit.

Ala. Code § 36-2-1 (1975). Person not eligible to hold state office; holding of state and federal offices of profit or two state offices of profit.

ALASKA

Alaska Const. art. II, § 2. Members' Qualifications.*

Alaska Stat. § 24.05.030 (1992). Qualifications of members.*

Alaska Stat. § 29.20.240(a) (1982). Qualifications for the office of mayor.*

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[1] An asterisk denotes that eligibility to vote establishes qualification to hold public office. Therefore, where an asterisk appears next to the constitutional provisions and statutes listed below, convicted felons are disqualified from holding public office, because the state disqualifies them from voting.



ARIZONA

Ariz. Const. art. VII, § 15. Qualifications for public office.*

Ariz. Rev. Stat. Ann. § 38-510 (Michie 1993). Penalties.

ARKANSAS

Ark. Const. art. 5, § 9. Persons convicted ineligible.

Ark. Code Ann. § 7-1-104 (1993). Miscellaneous felonies—Penalties.

CALIFORNIA

Cal. Gov't Code Ann. § 1021 (West 1980). Conviction of crime.

COLORADO

Colo. Const. art. 7, § 6. Electors only eligible to office*

Colo. Rev. Stat. Ann. § 1-4-501 (West Supp. 1993). Only eligible electors eligible for office.*

Colo. Rev. Stat. Ann. § 18-1-105(3) (West 1993). Felonies classified—presumptive penalties.

CONNECTICUT

Conn. Const. art. 6th, § 10. Eligibility to office.*

Conn. Const. art. 4th, § 5. Governor. Qualifications.*

Conn. Const. art. 3rd, § 3. Senate, number, qualifications.*

Conn. Gen. Stat. § 9-46 (West 1989). Forfeiture of electoral rights.*

DELAWARE

Del. Const., art. II, § 21. Conviction of crime as ban to public office.

Del. Const. art. XV, § 6. Behavior of officers; removal for misbehavior or infamous crime.

FLORIDA

Fla. Const. art. VI, § 4(a). Disqualifications.

Fla. Stat. Ann. § 114.01(j) (West 1988). Office deemed vacant in certain cases.

Fla. Stat. Ann. § 876.29 (West 1988). Subversive person prohibited from holding office or employment.

HAWAII

Haw. Rev. Stat. § 831-2(2) (1988). Rights lost.

IDAHO

Idaho Const. art. VI, § 3. Disqualification of certain persons.

Idaho Code § 18-109 (1949). Definition of crime.

Idaho Code § 18-310 (1949 & Supp. 1993). Imprisonment—Effect on civil rights and offices.

Idaho Code § 59-101 (1949). Qualifications in general.*

ILLINOIS

65 ILCS 5/3.1-10-5 (Smith-Hurd 1993). Qualifications; elective office.

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INDIANA

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IOWA

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LOUISIANA

La. Rev. Stat. Ann. § 18:451 (West 1979 & Supp. 1993). Qualifications of candidates.

La. Stat. Ann. § 42:1411(A) (West 1990 & Supp. 1993). Public officer; ground for removal; suspension; definitions.

MARYLAND

Md. Const. art. II, § 4. Qualifications of Attorney General.*

Md. Const. art. II, § 5. Qualification of Governor and Lieutenant Governor.

MASSACHUSETTS

Mass. Ann. Laws ch. 31, § 50 (Law. Co-op. 1993). Certain Persons Ineligible for Civil Service Position.

MICHIGAN

Mich. Const. art. IV, § 7. Legislators; qualifications, removal from district.

Mich. Comp. Laws Ann. § 168.161 (West 1989). State senator or representative; eligibility.

MISSISSIPPI

Miss. Const. art. 12, § 250.

Miss. Code Ann. § 25-5-1 (1972). Removals from office.

MISSOURI

Mo. Ann. Stat. § 561.021 (Vernon 1970 & Supp. 1993). Forfeiture of public office—disqualification.

MONTANA

Mont. Const. art. IV, § 4. Eligibility for public office.

NEBRASKA

Neb. Rev. Stat. § 29-112 (1989). Convicts; disqualified as electors, jurors, officeholders; warrant of discharge; effect.

Neb. Rev. Stat. § 29-113 (1989). Convicts of other states; disqualified as electors, jurors, officeholders; general pardon; effect.

NEVADA

Nev. Const. art. 15, § 3. Eligibility for public office.

Nev. Rev. Stat. Ann. § 281.040 (Michie 1990). Eligibility for office of honor, profit or trust.

NEW HAMPSHIRE

N.H. Stat. Ann. § 607-A:2(I)(b) (1986). Rights Lost.

NEW JERSEY

N.J. Rev. Stat. § 2C:51-2 (1982 & Supp. 1993). Forfeiture of public office.

NEW MEXICO

N.M. Stat. Ann. § 31-13-1(A) (1993). Effect of criminal conviction upon civil rights; governor may pardon or grant restoration of citizenship.

NEW YORK

N.Y. Civ. Rights Law § 79(1) (McKinney 1992). Forfeiture of office and suspension of civil rights.

NORTH CAROLINA

N.C. Const. art. 6, § 8. Disqualifications for office.



NORTH DAKOTA

N.D. Cent. Code § 44-01-01 (1993). Eligibility to office.*

OHIO

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Ohio Rev. Code Ann. § 2961.01 (Anderson 1993). Civil Rights of convicted felons.*

OKLAHOMA

Okla. Const. art. V, § 18. Ineligibility—Federal and state officers—Conviction of felony.

Okla. Stat. Ann. tit. 21, § 65 (West 1983). Civil rights suspended.

Okla. Stat. Ann. tit. 21, § 312 (West 1983). Forfeiture of office—Disqualification to hold office.

Okla. Stat. Ann. tit. 51, § 8 (West 1988). Office vacant, when.

PENNSYLVANIA

Pa. Const. art. 2, § 7. Ineligibility by criminal convictions.

Pa. Const. art. 6, § 7. Removal of civil officers.

SOUTH CAROLINA

S.C. Const. art. XVII, §1. Qualifications of officers.

S.C. Code Ann. § 24-21-990 (Law. Co-op. 1976 & Supp. 1992). Civil rights restored upon pardon.

SOUTH DAKOTA

S.D. Const. art. III, § 3. Qualifications for legislative office—Officers ineligible.

S.D. Const. art. III, § 4. Disqualification for conviction of crime—Defaults on public money.

S.D. Codified Laws Ann. § 23A-27-35 (1988). Suspension of civil rights on sentence to penitentiary—Prisoner as witness—Restoration of rights on suspension or termination of sentence.

TENNESSEE

Tenn. Code. Ann. § 4-36-202 (1991). Eligibility for appointment and membership.

Tenn. Code. Ann. § 6-31-201 (1992). Vacancies in council.

Tenn. Code Ann. § 8-47-101 (1993). Officers subject to removal—Grounds.

TEXAS

Tex. Const. art. XVI, § 2. Exclusions from office, jury service and right of suffrage; protection of right of suffrage.

UTAH

Utah Const. art. VII, § 3(4). Qualifications of officers.*

VIRGINIA

Va. Code Ann. § 24.2-231 (Michie 1950). Forfeiture of office by person sentenced for commission of certain crimes.

WASHINGTON

Wash. Const. art. III, § 25. Qualifications, Compensation, Offices Which may be Abolished.



WEST VIRGINIA

W.Va. Const. art. VI, § 14. Bribery Conviction Forfeits Eligibility.

W.Va. Code § 3-2-11 (1993). Appointment of registrars; qualification and duties.

W.Va. Code § 6-5-5 (1993). Disqualification by conviction of treason, felony, or bribery.

W.Va. Code § 6-6-9 (1993). Forfeiture of office on conviction of offense.

W.Va. Code § 61-5-3 (1992). Penalties for perjury, subornation of perjury, and false swearing.

W.Va. Code § 61-5-4 (1992). Bribery or attempted bribery; penalty.

WISCONSIN

Wis. Const. art. XIII, § 3. Eligibility to office.

Wis. Stat. Ann. § 17.03(5) (West 7986 & Supp. 1993). Vacancies, how caused.

WYOMING

Wyo. Stat. § 6-5-113 (1977). Removal from office after judgment of conviction.

Wyo. Stat. § 6-10-106(a) (1977). Rights lost by conviction of felony; restoration.

## IV. STATE ENACTMENTS DISQUALIFYING CONVICTED FELONS FROM SERVING AS JURORS

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Ala. Code § 12-16-60(4) (1975). Qualifications of jurors.

ALASKA

Alaska Stat. § 09.20.020 (1983 & Supp. 1993). Disqualification of jurors.

Alaska Stat. § 09.20.050 (1983 & Supp. 1993). Jury list.

ARIZONA

Ariz. Rev. Stat. Ann. § 21-201(3) (1956 & Supp. 1993). Qualifications.

ARKANSAS

Ark. Code Ann. § 16-21-101 (Michie 1987). Qualifications.

Ark. Code Ann. § 16-31-102(5) (Michie 1987). Disqualifications.

CONNECTICUT

Conn. Gen. Stat. Ann. § 51-217(a)(1), (b)(1) (West 1985 & Supp. 1993). Qualification of jurors.

DELAWARE

Del. Code Ann. tit. 10, § 4509(6) (1974). Disqualification from jury service.

FLORIDA

Fla. Stat. § 40-013(1) (West 1988 & Supp. 1993). Persons disqualified or excused from jury service.

GEORGIA

Ga. Code Ann. § 15-12-60(b)(2) (1990). Qualifications of grand jurors.

HAWAII

Haw. Rev. Stat. § 612-4(4) (1988). Grounds of disqualification.



IDAHO

Idaho Const. art. VI, § 3. Disqualification of certain persons.

Idaho Code § 2-209(2)(d) (1971). Court determination of qualification of prospective juror—Qualifications—Physician's certificate of physical or mental disability.

ILLINOIS

705 ILCS 305/2 (Smith-Hurd 1993). Petit jurors—Selection—Qualifications.

INDIANA

Ind. Code. Ann. § 33-4-5.5-10 (Burns 1982). Juror qualification form; mailing; contents; failure to return; misrepresentation.

KANSAS

Kan. St. Ann. § 43-156 (1986). Right to serve as juror; qualification as elector.

KENTUCKY

Ky. Rev. Stat. Ann. § 29A.080(2)(f) (Michie/Bobbs-Merrill 1976). Disqualifications for jury service.

LOUISIANA

La. Code Crim. Proc. art. 401 (West 1991). General qualifications of jurors.

MARYLAND

Md. Code Ann., Cts. & Jud. Proc. § 8-207(b)(5) (1989 & Supp. 1993). Qualifications for jury service.

MICHIGAN

Mich. Comp. Laws Ann. § 600.1307a(1)(e) (West 1981 & Supp. 1993). Jurors; qualifications, age exemption, service.

MISSISSIPPI

Miss. Code Ann. § 13-5-1 (1972). Who are competent jurors; determination of literacy.

MISSOURI

Mo. Ann. Stat. § 561.016 (Vernon 1970). Basis of disqualification or disability.

Mo. Ann. Stat. § 561.026 (Vernon 1970 & Supp. 1993). Disqualification from voting and jury service.

MONTANA

Mont. Code Ann. § 3-15-301 (1992). Who competent.

Mont. Code Ann. § 3-15-303 (1992). Who not competent.

NEBRASKA

Neb. Rev. Stat. § 29-112 (1989). Convicts; disqualified as electors, jurors, officeholders; warrant of discharge; effect.

Neb. Rev. Stat. § 29-113 (1989). Convicts of other states; disqualified as electors, jurors, officeholders; general pardon; effect.

NEVADA

Nev. Rev. Stat. § 6.010 (1986). Persons qualified to act as jurors.

NEW JERSEY

N.J. Rev. Stat. § 2C:51-3 (1982). Voting and jury service.



NEW MEXICO

N.M. Stat. Ann. § 38-5-1. (Michie 1978 & Supp. 1993). Qualification of jurors.

NEW YORK

N.Y. Judiciary Law § 509 (McKinney 1992). Qualifications of jurors.

N.Y. Civ. Rts. § 13 (McKinney 1992). Right to serve on juries.

NORTH CAROLINA

N.C. Gen. Stat. § 9-3 (1986). Qualifications of prospective jurors.

N.C. Gen. Stat. § 163-69.3 (1991). Removal for conviction of a felony.

NORTH DAKOTA

N.D. Cent. Code § 27-09.1-08 (1991 & Supp. 1993). Disqualification from jury service.

OKLAHOMA

Okla. Stat. tit. 38, § 28 (West 1990). Qualifications and exemptions.

OREGON

Or. Rev. Stat. § 137.281(3)(c) (1987 & Supp. 1992). Withdrawal of rights during term of imprisonment; restoration of rights.

PENNSYLVANIA

42 Pa. Cons. Stat. Ann. § 4502 (1981). Qualifications of jurors.

RHODE ISLAND

R.I. Gen. Laws § 9-9-1.1(c) (Supp. 1993). Qualifications of jurors.

SOUTH CAROLINA

S.C. Code Ann. § 14-7-810(1) (Law. Co-op. 1976 & Supp. 1992). Enumeration of disqualifications in any court.

SOUTH DAKOTA

S.D. Codified Laws Ann. § 23A-27-35 (1980 & Supp. 1993). Suspension of civil rights on sentence to penitentiary—Prisoner as witness—Restoration of rights on suspension or termination of sentence.

TENNESSEE

Tenn. Code Ann. §§ 22-1-102(1), 22-1-102(2) (1988). Excluded persons.

TEXAS

Tex. Const. art. XVI, § 2. Exclusions from office, jury service and right of suffrage; protection of right of suffrage.

Tex. Gov't Code Ann. § 62.102(4), § 62.102(7) West 1988). General Qualifications for Jury Service.

VERMONT

Vt. Code Ann. tit. 12, § 64 (1973). Jurors--Conviction of crime; citizenship and residence.

VIRGINIA

Va. Code Ann. § 8.01-338(2) (Michie 1950). Who disqualified.

WASHINGTON

Wash. Rev. Code Ann. § 2.36.070(5) (West 1988 & Supp. 1993). Qualification of jurors.

WEST VIRGINIA

W. Va. Code § 52-1-8(b)(5) (Supp. 1993). Disqualification from jury service.



WISCONSIN

Wis. Stat. Ann. § 6.03(1)(b) (West 1986 & Supp. 1993). Disqualification of electors.

Wis. Stat. Ann. § 756.01 (West 1991). Qualifications of jurors.

WYOMING

Wyo. Stat. § 1-11-102 (1977). Convicted felon disqualified.

Wyo. Stat. § 6-10-106 (1977). Rights lost by conviction of felony; restoration.

DISTRICT OF COLUMBIA

D.C. Code Ann. § 11-1906 (1981). Qualification of jurors.

## V. STATE ENACTMENTS DISQUALIFYING CONVICTED FELONS FROM SERVING AS FIDUCIARIES

ALABAMA

Ala. Code § 43-2-22 (1975). Disqualification of certain persons to serve as executor or administrator.

ARIZONA

Ariz. Rev. Stat. Ann. § 14-5106 (Michie Supp. 1993). Disclosure requirements for proposed guardians and conservators; restrictions by local rules.

ARKANSAS

Ark. Code Ann. § 28-48-101 (Michie 1987). Persons entitled to domiciliary letters.

DELAWARE

Del. Code Ann. tit. 12, § 1508 (1974). Persons not qualified to receive letters testamentary or of administration.

FLORIDA

Fla. Stat. Ann. § 733.303 (West 1976 & Supp. 1993). Persons not qualified.

ILLINOIS

755 ILCS 5/6-13 (Smith-Hurd 1993). Who may act as executor.

INDIANA

Ind. Code Ann. § 29-1-10-1 (Burns 1989). Letters testamentary; letters of general administration; persons to whom granted; order; qualifications.

LOUISIANA

La. Rev. Stat. Ann. § 11:264.2 (West 1993). Fiduciary restriction; felony conviction.

MARYLAND

Md. Code Ann., Est. & Trusts § 5-105 (1991). Restrictions on rights to letters.

MINNESOTA

Minn. Stat. Ann. § 356A.03 (West 1991). Prohibition of certain persons from fiduciary status.

MISSISSIPPI

Miss. Code Ann. § 91-7-35 (1972). Grant of letters testamentary.



MISSOURI

Mo. Ann. Stat. § 473.140 (Vernon 1992). Removal of personal representative.

NEBRASKA

Neb. Rev. Stat. § 29-113 (1989). Convicts of other states; disqualified as electors, jurors, officeholders; general pardon; effect.

NEVADA

Nev. Rev. Stat. § 138.020 (1993). Who may serve as executor; letters with will annexed.

NORTH CAROLINA

N.C. Gen. Stat. § 35A-1290 (1987). Removal by clerk.

OKLAHOMA

Okla. Stat. Ann. tit. 58 § 102 (West 1965). Who is incompetent as executor.

SOUTH DAKOTA

S.D. Codified Laws § 30-8-1 (1984). Persons disqualified to serve as executor.

S.D. Codified Laws § 30-9-6 (1984). Persons disqualified to act as administrator.

S.D. Codified Laws § 23A-27-35 (1988). Suspension of civil rights on sentence to penitentiary—Prisoner as witness—Restoration of rights on suspension or termination of sentence.

TEXAS

Tex. Prob. Code Ann. § 78 (West 1980). Persons Disqualified to Serve as Executor or Administrator.

WASHINGTON

Wash. Rev. Code Ann. § 11.36.010 (West 1987) Parties disqualified—Result of disqualification after appointment.

Wash. Rev. Code Ann. § 11.36.021 (West 1987 & Supp. 1993). Trustees—Who may serve.

Wash. Rev. Code Ann. § 11.88.020 (West 1987 & Supp. 1993). Qualifications.

WYOMING

Wyo. Stat. § 2-3-123 (1977). Remaining personal representatives to continue if one disqualified.

DISTRICT OF COLUMBIA

D.C. Code Ann. § 1-744 (1981). Prohibition against certain persons holding certain positions.

## VI. STATE ENACTMENTS DISQUALIFYING CONVICTED FELONS FROM SERVING AS POLICE OFFICERS, PEACE OFFICERS, OR OTHER LAW ENFORCEMENT OFFICERS

ARKANSAS

Ark. Code Ann. § 12-8-202 (Michie 1987). Qualifications of members.

Ark. Code Ann. § 12-9-106 (Michie 1987). Selection and training requirements—Exceptions.

CALIFORNIA

Cal. Gov't Code § 1029 (Deering 1980 & Supp. 1993). Disqualifications for office or employment as peace officer.



COLORADO

Col. Rev. Stat. § 24-31-305 (West Supp. 1993). Certification—revocation of certification.

GEORGIA

Ga. Code Ann. § 15-16-1 (1990 & Supp. 1993). Qualifications; training requirements.

Ga. Code Ann. § 35-8-7.1 (1990 & Supp. 1993). Authority of council to refuse certificate to applicant or to discipline certified peace officer or exempt peace officer; grounds; restoration of certificate.

KANSAS

Kan. Stat. Ann. § 74-5616 (1992). Eligibility for appointment as officer; certification by commission required; suspension, revocation or denial of certification; judicial review.

MASSACHUSETTS

Mass. Ann. Laws ch. 41, § 96A (Law. Co-op. 1993). No Felon to Be Appointed.

Mass. Ann. Laws ch. 125, § 9 (Law. Co-op. 1989). Training School for Correction Officers.

OKLAHOMA

Okla. Stat. tit. § 3311 (West Supp. 1994). Council on Law Enforcement Education and Training.

OREGON

Or. Rev. Stat. § 206.015 (1989). Qualifications of sheriff; determination of qualifications by Board on Public Safety Standards and Training.

PENNSYLVANIA

Pa. Stat. Ann. tit. 53, § 744 (Supp. 1993). Powers and duties of the commission.

UTAH

Utah Code Ann. § 53-6-203 (Supp. 1993). Applicants for admission to training programs or for certification examination—Requirements.

WYOMING

Wyo. Stat. § 9-1-704 (1977). Qualifications for employment as a peace officer; loss of certification for felony conviction; termination from employment.



## APPENDIX B

## INDEX OF STATE CIVIL RIGHTS RESTORATION STATUTES

ALABAMA

**Ala. Code § 17-3-10 (1987).** Restoration of right to vote upon pardon.

> Any person who is disqualified by reason of conviction of any of the offenses mentioned in article VIII of the Constitution of Alabama, except treason and impeachment, whether the conviction was had in a state or federal court, and who has been pardoned, may be restored to his citizenship with right to vote by the state board of pardons and paroles when specifically expressed in the pardon. If otherwise qualified, such person shall be permitted to register or reregister as an elector upon submission of a copy of the pardon document to the board of registrars or deputy registrars of the county of his residence.

ALASKA

**Alaska Stat. § 15.05.030 (1993).** Loss and restoration of voting rights.

> (a) A person convicted of a crime that constitutes a felony involving moral turpitude under state law may not vote in a state or a municipal election from the date of the conviction through the date of the unconditional discharge of the person. Upon the unconditional discharge, the person may register under AS 15.07.

ARIZONA

**Ariz. Rev. Stat. Ann. § 13-905 (1989).** Restoration of civil rights; persons completing probation.

A. A person who has been convicted of two or more felonies whose period of probation has been completed may have any civil rights which were lost or suspended by his felony conviction restored by the judge who discharges him at the end of the term of probation.

B. Upon proper application, a person who has been discharged from probation either prior to or after adoption of this chapter may have any civil rights which were lost or suspended by his felony conviction restored by the superior court judge by whom the person was sentenced or his successors in office from the county in which he was originally convicted. The clerk of such superior court shall have the responsibility for processing the application upon request of the person involved or his attorney. The superior court shall cause a copy of the application to be served upon the county attorney.

**Ariz. Rev. Stat. Ann. § 13-906 (1989).** Applications by persons discharged from prison.

A. Upon proper application, a person who has been convicted of two or more felonies who has received an absolute discharge from imprisonment may have any civil rights which were lost or suspended by his conviction restored by the superior court judge by whom the person was sentenced or his successors in office from the county in which he was originally sentenced.



B. A person who is subject to the provisions of subsection A may file, no sooner than two years from the date of his absolute discharge, an application for restoration of civil rights that shall be accompanied by a certificate of absolute discharge from the director of the department of corrections. The clerk of the superior court that sentenced the applicant shall have the responsibility for processing applications for restoration of civil rights upon request of the person involved, his attorney or a representative of the state department of corrections. The superior court shall cause a copy of the application to be served upon the county attorney.

**Ariz. Rev. Stat. Ann. § 13-909 (1989).** Restoration of civil rights; person completing probation for federal offense.

A. A person who has been convicted of two or more felonies whose period of probation has been completed may have any civil rights which were lost or suspended by his felony conviction in a United States district court restored by the presiding judge of the superior court in the county in which he now resides, upon filing of an affidavit of discharge from the judge who discharged him at the end of the term of probation.

B. Upon proper application, a person who has been discharged from probation either prior to or after adoption of this chapter may have any civil rights which were lost or suspended by his felony conviction restored by an application filed with the clerk of the superior court in the county in which he now resides. The clerk of the superior court shall process the application upon request of the person involved or his attorney.

**Ariz. Rev. Stat. Ann. § 13-910 (1989).** Applications by persons discharged from federal prison.

A. Upon proper application, a person who has been convicted of two or more felonies who has received an absolute discharge from imprisonment in a federal prison may have any civil rights which were lost or suspended by his conviction restored by the presiding judge of the superior court in the county in which he now resides.

B. A person who is subject to the provisions of subsection A may file, no sooner than two years from the date of his absolute discharge, an application for restoration of civil rights that shall be accompanied by a certificate of absolute discharge from the director of the federal bureau of prisons, unless it is shown to be impossible to obtain such certificate. Such application shall be filed with the clerk of the superior court in the county in which the person now resides and such clerk shall be responsible for processing applications for restoration of civil rights upon request of the person involved or his attorney.

CALIFORNIA

**Cal. Penal Code § 4853 (Deering 1992).** Restoration of rights, privileges, and franchises; Effect of full pardon on authority of licensing boards.

In all cases in which a full pardon has been granted by the Governor of this state or will hereafter be granted by the Governor to a person convicted of an offense to which the pardon applies, it shall operate to restore to the convicted person, all the rights, privileges, and franchises of which he or she has been deprived



in consequence of that conviction or by reason of any matter involved therein; provided, that nothing herein contained shall abridge or impair the power or authority conferred by law on any board or tribunal to revoke or suspend any right, privilege or franchise for any act or omission not involved in the conviction; provided further, that nothing in this article shall affect any of the provisions of the Medical Practice Act (Chapter 5 (commencing with Section 2000) of Division 2 of the Business and Professions Code) or the power or authority conferred by law on the Board of Medical Examiners therein, or the power or authority conferred by law upon any board that issues a certificate which permits any person or persons to apply his or her or their art or profession on the person of another.

**Cal. Penal Code § 4854 (Deering 1992).** Restoration of rights to own and possess firearm; Exception.

In the granting of a pardon to a person, the Governor may provide that the person is entitled to exercise the right to own, possess and keep any type of firearms that may lawfully be owned and possessed by other citizens; except that this right shall not be restored, and Sections 12001 and 12021 shall apply, if the person was ever convicted of a felony involving the use of a dangerous weapon.

COLORADO

**Colo. Const. Art. VII, § 10.** Disfranchisement during imprisonment.

No person while confined in any public prison shall be entitled to vote; but every such person who was a qualified elector prior

to such imprisonment, and who is released therefrom by virtue of a pardon, or by virtue of having served out his full term of imprisonment, shall without further action, be invested with all the rights of citizenship, except as otherwise provided in this constitution.

CONNECTICUT

**Conn. Gen. Stat. § 9-46a (West 1989).** Restoration of electoral privileges.

(a) A person who has been convicted of a felony shall have his electoral privileges restored upon submission of written or other satisfactory proof to the admitting official before whom he presents his qualifications to be admitted as an elector, that all fines in conjunction with the conviction have been paid and that he has been discharged from confinement, parole or probation, as the case may be.

(b) The registrars of voters of the municipality in which a person is admitted as an elector, pursuant to subsection (a) of this section, within thirty days after the date on which such person is admitted, shall notify the registrars of voters of the municipality wherein such person resided at the time of his conviction that his electoral rights have been so restored to him.

DELAWARE

**Del. Code Ann. tit. 11, § 4347(i) (1987).** Parole authority and procedure.

(i) The period served on parole or conditional release shall be deemed service of the term of imprisonment, and subject to the provisions contained in § 4352 of this title, relating to a person who is a fugitive from or has fled from justice, the total time served may not exceed the maximum term or sentence. When a person on parole or conditional release has performed the obligations of his release for such time as shall satisfy the Board that his final release is not incompatible with the best interest of society and the welfare of the individual, the Board may make a final order of discharge and issue a certificate of discharge to the person; but no such order of discharge shall be made within 1 year after the date of release except where the sentence expires earlier thereto. Such discharge, and the discharge of a person who has served his term of imprisonment, shall have the effect of restoring all civil rights lost by operation of law upon commitment. Except when discharged herein a person on parole or conditional release shall be on parole until the expiration of the maximum term for which he is sentenced.



FLORIDA

**Fla. Stat. Ann. § 940.05 (West 1985).** Restoration of civil rights.

Any person who has been convicted of a felony may be entitled to the restoration of all the rights of citizenship enjoyed by him prior to his conviction if he has:

(1) Received a full pardon from the board of pardons;

(2) Served the maximum term of the sentence imposed upon him; or

(3) Been granted his final release by the Parole Comission.

**Fla. Stat. Ann. § 944.293 (West 1985).** Initiation of restoration of civil rights.

> With respect to those persons convicted of a felony, the following procedure shall apply: Prior to the time an offender is discharged from supervision, an authorized agent of the department shall obtain from the Governor the necessary application and other forms required for the restoration of civil rights. The authorized agent shall assist the offender in completing these forms and shall insure that the application and all necessary material are forwarded to the Governor before the offender is discharged from supervision.

GEORGIA

**Ga. Code Ann. § 16-11-131 (Michie 1992).** Possession of firearms by convicted felons and first offender probationers.

> (c) This Code section shall not apply to any person who has been pardoned for the felony by the President of the United States, the State Board of Pardons and Paroles, or the person or agency empowered to grant pardons under the constitutions or laws of the several states or of a foreign nation and, by the terms of the pardon, has expressly been authorized to receive, possess, or transport a firearm.

HAWAII

**Haw. Rev. Stat. § 831-5 (1988).** Certificate of discharge.

> (a) If the sentence was in this State, the order, certificate, or other instrument of discharge, given to a person sentenced for a felony upon the person's discharge after completion of service of the person's sentence or after service under probation or parole, shall state that the defendant's rights to vote and to hold any future public office, of which the defendant was deprived by this chapter, are thereby restored and that the defendant suffers no other disability by virtue of the defendant's conviction and sentence except as otherwise provided by this chapter. A copy of the order or other instrument of discharge shall be filed with the clerk of the court of conviction.
>
> (b) If the sentence was in another state or in a federal court and the convicted person has similarly been discharged by the appropriate authorities, the director of social services of this State, upon application and proof of the discharge in such form as the director of social services may require, shall issue a certificate stating that such rights have been restored to the convicted person under the laws of this State.
>
> (c) If another state having an act similar to this chapter issues its certificate of discharge to a convicted person stating that the defendant's rights have been restored, the rights of which the defendant was deprived in this State under this chapter are restored to the defendant in this State.



IDAHO

**Idaho Code § 18-310(2) (1949 & Supp. 1993).** Imprisonment—Effect on civil rights and offices.

> (2) Upon the final discharge of a person convicted of any felony except treason, a person shall be restored the full rights of citizenship.

As used in this subsection, "final discharge" means satisfactory completion of imprisonment, probation and parole as the case may be.

ILLINOIS

**730 ILCS 5/5-5-5(d) (Smith-Hurd 1993) (footnote omitted).** Loss and restoration of rights.

(d) On completion of sentence of imprisonment or upon discharge from probation, conditional discharge or periodic imprisonment, or at any time thereafter, all license rights and privileges granted under the authority of this State which have been revoked or suspended because of conviction of an offense shall be restored unless the authority having jurisdiction of such license rights finds after investigation and hearing that restoration is not in the public interest. This paragraph (d) shall not apply to the suspension or revocation of a license to operate a motor vehicle under the Illinois Vehicle Code.

IOWA

**Iowa Code Ann. § 914.1. (West 1993).** Power of governor.

The power of the governor under the constitution to grant a reprieve, pardon, commutation of sentence, remission of fines and forfeitures, or restoration of the rights of citizenship shall not be impaired.

**Iowa Code Ann. § 914.2. (West 1993).** Right of application.

A person convicted of a criminal offense has the right to make application to the board of



parole for recommendation or to the governor for a reprieve, pardon, commutation of sentence, remission of fines or forfeitures, or restoration of rights of citizenship at any time following the conviction.

**Iowa Code Ann. § 914.3. (West 1993).** Recommendations by board of parole.

1. The board of parole shall periodically review all applications by persons convicted of criminal offenses and shall recommend to the governor the reprieve, pardon, commutation of sentence, remission of fines or forfeitures, or restoration of the rights of citizenship for persons who have by their conduct given satisfactory evidence that they will become or continue to be law-abiding citizens.

2. The board of parole shall, upon request of the governor, take charge of all correspondence in reference to an application filed with the governor and shall, after careful investigation, provide the governor with the board's advice and recommendation concerning any person for whom the board has not previously issued a recommendation.

3. All recommendations and advice of the board of parole shall be entered in the proper records of the board.

KANSAS

**Kan. Stat. Ann. § 22-3722 (1988).** Discharge; restoration of civil rights.

The period served on parole or conditional release shall be deemed service of the term of confinement, and, subject to the provisions con-

tained in K.S.A. 1981 Supp. 75-5217 relating to an inmate who is a fugitive from or has fled from justice, the total time served may not exceed the maximum term or sentence.

When an inmate on parole or conditional release has performed the obligations of his release for such time as shall satisfy the authority that his final release is not incompatible with the best interest of society and the welfare of the individual, the authority may make a final order of discharge and issue a certificate of discharge to the inmate but no such order of discharge shall be made in any case within a period of less than one year after the date of release except where the sentence expires earlier thereto. Such discharge, and the discharge of an inmate who has served his term of imprisonment, shall have the effect of restoring all civil rights lost by operation of law upon commitment, and the certification of discharge shall so state. Nothing herein contained shall be held to impair the power of the governor to grant a pardon or commutation of sentence in any case.

LOUISIANA

**La. Const. Art. I, § 20 (1992).** Right of Humane Treatment.

No law shall subject any person to euthanasia, to torture, or to cruel, excessive, or unusual punishment. Full rights of citizenship shall be restored upon termination of state and federal supervision following conviction for any offense.



MINNESOTA

**Minn. Stat. Ann. § 609.165 (West 1993).** Restoration of civil rights.

Subdivision 1. When a person has been deprived of civil rights by reason of conviction of a crime and is thereafter discharged, such discharge shall restore the person to all civil rights and to full citizenship, with full right to vote and hold office, the same as if such conviction had not taken place, and the order of discharge shall so provide.

Subd. 1a. Certain convicted felons ineligible to possess firearms. The order of discharge must provide that a person who has been convicted of a crime of violence, as defined in section 624.712, subdivision 5, is not entitled to ship, transport, possess, or receive a firearm until ten years have elapsed since the person was restored to civil rights and during that time the person was not convicted of any other crime of violence. Any person who has received such a discharge and who thereafter has received a relief of disability under United States Code, title 18, section 925, shall not be subject to the restrictions of this subdivision.

Subd. 2. The discharge may be:

(1) By order of the court following stay of sentence or stay of execution of sentence; or

(2) Upon expiration of sentence.

Subd. 3. This section does not apply to a forfeiture of and disqualification for public office as provided in section 609.42, subdivision 2.

MISSISSIPPI

**Miss. Code Ann. § 47-7-41 (1972).** Discharge from probation.

> When a probationer shall be discharged from probation by the court of original jurisdiction, the field supervisor, upon receiving a written request from the probationer, shall forward a written report of the record of the probationer to the Division of Community Services of the department, which shall present a copy of this report to the Governor. The Governor may, in his discretion, at any time thereafter by appropriate executive order restore any civil rights lost by the probationer by virtue of his conviction or plea of guilty in the court of original jurisdiction.

MONTANA

**Mont. Code Ann. § 46-18-801(3) (1993).** Effect of conviction—civil disabilities.

> (3) When a person has been deprived of any of his civil or constitutional rights by reason of conviction for an offense and his sentence has expired or he has been pardoned, he shall be restored to all civil rights and full citizenship, the same as if such conviction had not occurred.

NEBRASKA

**Neb. Rev. Stat. § 29-112.01 (1989).** Convicts; sentence other than confinement in Department of Correctional Services adult correctional facility; warrant of discharge; effect.

> Any person heretofore or hereafter sentenced to be punished for any felony, where sentence



> is other than confinement in the Department of Correctional Services adult correctional facility, shall be restored to civil rights upon receipt from the Board of Pardons of a warrant of discharge, which shall be issued by such board upon receiving from the sentencing court a certificate showing satisfaction of the judgment and sentence entered against such person.

NEVADA

**Nev. Rev. Stat. § 213.090 (1992).** Pardon: Restoration of civil rights.

> 1. When a pardon is granted for any offense committed, the pardon may or may not include restoration of civil rights. If the pardon includes restoration of civil rights, it shall be so stated in the instrument or certificate of pardon; and when granted upon conditions, limitations or restrictions, they shall be fully set forth in the instrument.
>
> 2. In any case where a convicted person has received a pardon without immediate restoration of his civil rights and has not been convicted of any offense greater than a traffic violation within 5 years after such pardon, he may apply to the state board of pardons commissioners for restoration of his civil rights and release from penalties and disabilities resulting from the offense or crime of which he was convicted. If, after investigation, the board determines that the applicant meets the requirements of this subsection, it shall restore him to his civil rights and release him from all penalties and disabilities resulting from the offense or crime of which he was convicted. If the board refuses to grant such restoration and release, the applicant may, after notice to the board, petition the district

court in which the conviction was obtained for an order directing the board to grant such restoration and release.

**Nev. Rev. Stat. § 213.155 (1991).** Restoration of civil rights to paroled prisoner.

1. The board may restore a paroled prisoner to his civil rights, such restoration to take effect at the expiration of his parole.

2. In any case where a convicted person has completed his parole without immediate restoration of his civil rights and has not been convicted of any offense greater than a traffic violation within 5 years after completion of parole, he may apply to the state board of parole commissioners for restoration of his civil rights and release from penalties and disabilities which resulted from the offense or crime of which he was convicted. If, after investigation, the board determines that the applicant meets the requirements of this subsection, it shall restore him to his civil rights and release him from all penalties and disabilities resulting from the offense or crime of which he was convicted. If the board refuses to grant such restoration and release, the applicant may, after notice to the board, petition the district court in which the conviction was obtained for an order directing the board to grant such restoration and release.

3. The board may make regulations necessary or convenient for the purposes of this section.

**Nev. Rev. Stat. § 213.157 (1991).** Restoration of civil rights after sentence served.

In any case where a person convicted of a felony in the State of Nevada has served his sentence and been released from prison, and has not been convicted of any offense greater than a traffic violation within 5 years of his release, he may apply to the department of parole and probation requesting restoration of his civil rights and release from all penalties and disabilities which resulted from the offense or crime of which he was convicted. If, after investigation, the department determines that the applicant meets the requirements of this section, it shall petition the district court in which the conviction was obtained for an order granting such restoration and release. If the department refuses to submit such petition, the applicant may, after notice to the department, petition such court directly for the restoration of civil rights and release from all penalties and disabilities which resulted from the offense or crime of which he was convicted.



## NEW HAMPSHIRE

**N.H. Rev. Stat. Ann. § 607-A:5 (1991).** Certificate of Discharge.

I. If the sentence was imposed in this state, the order, certificate, or other instrument of discharge given to a person sentenced for a felony upon his discharge after completion of service of his sentence or after service under probation or parole shall state that the defendant's rights to vote and to hold any future public office, of which he was deprived by this chapter, are thereby restored and that he suffers no other disability by virtue of his conviction and sentence except as otherwise provided by this chapter. A copy of the order or other instrument of discharge shall be filed with the clerk of the court of conviction.

II. If the sentence was imposed in another state or in a federal court and the convicted person has similarly been discharged by the appropriate authorities, the governor of this state, upon application and proof of the discharge in such form as the governor may require, shall issue a certificate stating that the rights enumerated in paragraph I have been restored to the defendant under the laws of this state.

III. If another state having a similar act issues its certificate of discharge of a convicted person stating that the defendant's rights have been restored, the rights of which he was deprived in this state under this chapter are restored to him in this state.

NEW MEXICO

**N.M. Stat. Ann. § 31-13-1 (Michie 1993).** Effect of criminal conviction upon civil rights; governor may pardon or grant restoration of citizenship.

B. When any convict shall pass the entire period of his sentence within the penitentiary, he shall be entitled to a certificate thereof by the superintendent of the penitentiary; or if such person shall complete the period of his sentence while on parole, he shall be entitled to a certificate thereof by the director of parole (director of the field services division of the corrections department).

C. The disability imposed by this section may only be removed by the governor. Upon presentation to the governor of a certificate evidencing the completion of an individual's sentence, the governor may, in his discretion, grant to such individual a pardon or a certificate restoring such person to full rights of citizenship.



NEW YORK

**N.Y. Correct. Law § 701(1) (McKinney 1987).** Certificate of relief from disabilities.

1. A certificate of relief from disabilities may be granted as provided in this article to relieve an eligible offender of any forfeiture or disability, or to remove any bar to his employment, automatically imposed by law by reason of his conviction of the crime or the offense specified therein. Such certificate may be limited to one or more enumerated forfeitures, disabilities, or bars, or to relieve the eligible offender of all forfeitures, disabilities, and bars. Provided, however, that no such certificate shall apply, or be construed so as to apply, to the right of such person to retain or to be eligible for public office.

**N.Y. Correct. Law § 701(2) (McKinney 1994).** Certificate of relief from disabilities.

[Eff. until Oct. 1, 1994, as amended by L.1993, c. 533. See, also, subd. 2 below.] Notwithstanding any other provision of law, except subdivision five of section twenty-eight hundred six of the public health law or paragraph (b) of subdivision two of section eleven hundred ninety-three of the vehicle and traffic law, a conviction of a crime or of an offense specified in a certificate of relief from disabilities shall not cause automatic forfeiture of any license, permit, employment or franchise, including the right to register for or vote at an election, or automatic forfeiture of any other right or privilege, held by the eligible offender and covered by the certificate. Nor shall such conviction be deemed to be a conviction within the meaning of any provision of law that imposes, by reason of a conviction, a bar to any employment, a

disability to exercise any right or a disability to apply for or to receive any license, permit or other authority or privilege, covered by the certificate; provided, however a conviction for a second or subsequent violation of any subdivision of section eleven hundred ninety-two of the vehicle and traffic law committed within the preceding ten years shall impose a disability to apply for or receive an operator's license during the period provided in such law. A certificate of relief from a disability imposed pursuant to subparagraph (v) of paragraph b of subdivision two and paragraphs i and j of subdivision six of section five hundred ten of the vehicle and traffic law may only be issued upon a determination that compelling circumstances warrant such relief.

[Eff. Oct. 1, 1994. See, also, subd. 2 above.] Notwithstanding any other provision of law, except subdivision five of section twenty-eight hundred six of the public health law or paragraph (b) of subdivision two of section eleven hundred ninety-three of the vehicle and traffic law, a conviction of a crime or of an offense specified in a certificate of relief from disabilities shall not cause automatic forfeiture of any license, permit, employment or franchise, including the right to register for or vote at an election, or automatic forfeiture of any other right or privilege, held by the eligible offender and covered by the certificate. Nor shall such conviction be deemed to be a conviction within the meaning of any provision of law that imposes, by reason of a conviction, a bar to any employment, a disability to exercise any right or a disability to apply for or to receive any license, permit or other authority or privilege, covered by the certificate; provided, however, a conviction for a second or subsequent violation of any subdivision of section eleven hundred ninety-two of the vehicle and traffic law committed within the preceding ten years shall impose a disability to apply for or receive an operator's license during the period provided in such law.



**N.Y. Correct. Law § 702(1) & (2) (McKinney 1987).** Certificates of relief from disabilities issued by courts.

1. Any court of this state may, in its discretion, issue a certificate of relief from disabilities to an eligible offender for a conviction that occurred in such court, if the court either (a) imposed a revocable sentence or (b) imposed a sentence other than one executed by commitment to an institution under the jurisdiction of a state department of correctional services. Such certificate may be issued (i) at the time sentence is pronounced, in which case it may grant relief from forfeitures as well as from disabilities, or (ii) at any time thereafter, in which case it shall apply only to disabilities.

2. Such certificate shall not be issued by the court unless the court is satisfied that:

(a) The person to whom it is to be granted is an eligible offender, as defined in section seven hundred;

(b) The relief to be granted by the certificate is consistent with the rehabilitation of the eligible offender; and

(c) The relief to be granted by the certificate is consistent with the public interest.

**N.Y. Correct. Law § 703(1) (McKinney 1987).** Certificates of relief from disabilities issued by the board of parole.

The state board of parole shall have the power to issue a certificate of relief from disabilities to:

(a) any eligible offender who has been committed to an institution under the jurisdiction of the state department of correctional services. Such certificate may be issued by the board at the time the offender is released from such institution under the board's supervision or otherwise or at any time thereafter;

(b) any eligible offender who resides within this state and whose judgment of conviction was rendered by a court in any other jurisdiction.

NORTH CAROLINA

**N.C. Gen. Stat. § 13-1 (1992).** Restoration of citizenship.

Any person convicted of a crime, whereby the rights of citizenship are forfeited, shall have such rights automatically restored upon the occurrence of any one of the following conditions:

(1) The unconditional discharge of an inmate by the State Department of Correction or the North Carolina Department of Correction, of a probationer by the State Department of Correction, or of a parolee by the Department of Correction; or of a defendant under a suspended sentence by the court.

(2) The unconditional pardon of the offender.

(3) The satisfaction by the offender of all conditions of a conditional pardon.



(4) With regard to any person convicted of a crime against the United States, the unconditional discharge of such person by the agency of the United States having jurisdiction of such person, the unconditional pardon of such person or the satisfaction by such person of a conditional pardon.

(5) With regard to any person convicted of a crime in another state, the unconditional discharge of such person by the agency of that state having jurisdiction of such person, the unconditional pardon of such person or the satisfaction by such person of a conditional pardon.

**N.C. Gen. Stat. § 13-2 (1992).** Issuance and filing of certificate or order of restoration.

(a) The agency, department, or court having jurisdiction over the inmate, probationer, parolee or defendant at the time his rights of citizenship are restored under the provisions of G.S. 13-1(1) shall immediately issue a certificate or order in duplicate evidencing the offender's unconditional discharge and specifying the restoration of his rights of citizenship.

The original of such certificate or order shall be promptly transmitted to the clerk of the General Court of Justice in the county where the official record of the case from which the conviction arose is filed. The clerk shall then file the certificate or order without charge with the official record of the case.

(b) In the case of a person convicted of a crime against another state or the United States, whose rights to citizenship have been restored according to G.S. 13-1, the following provisions shall apply:

(1) It shall be the duty of the clerk of the court in the county where such person resides, upon a showing by such person or his representative that the conditions of G.S. 13-1 have been met, to issue the certificate evidencing the offender's unconditional discharge and specifying the restoration of his rights of citizenship.

For purposes of this subsection, the fulfillment of the conditions of G.S. 13-1 shall be considered met upon the presentation to the clerk of any paper writing from the agency of any other state or of the United States which had jurisdiction over such person, which shows that the conditions of G.S. 13-1 have been met.

(2) The certificate described in subdivision (b)(1) shall be filed by the clerk of the General Court of Justice in the county in which such person resides.

The provisions of this subsection apply equally to conditional and unconditional pardons by the governor of any other state or by the President of the United States, as well as unconditional discharges by the agency of another state or of the United States having jurisdiction over said person.

NORTH DAKOTA

**N.D. Cent. Code § 12-55-24 (1985).** Board may restore civil rights.

The board of pardons may restore to civil rights any person convicted of any offense committed against the state, upon cause being shown, after the execution or expiration of sentence or at any other time.



OHIO

**Ohio Rev. Code Ann. § 2961.01 (Anderson 1993).** Civil rights of convicted felons.

A person convicted of a felony under the laws of this or any other state or the United States, unless his conviction is reversed or annulled, is incompetent to be an elector or juror, or to hold an office of honor, trust, or profit. When any such person is granted probation, parole, or a conditional pardon, he is competent to be an elector during the period of probation or parole or until the conditions of his pardon have been performed or have transpired, and thereafter following his final discharge. The full pardon of a convict restores the rights and privileges so forfeited under this section, but a pardon shall not release a convict from the costs of his conviction in this state, unless so specified.

OREGON

**Or. Rev. Stat. § 137.281(5) (1991).** Withdrawal of rights during term of imprisonment; restoration of rights.

The rights and privileges withdrawn by this section are restored automatically upon discharge or parole from imprisonment, but in the case of parole shall be automatically withdrawn upon a subsequent imprisonment for violation of the terms of the parole.

SOUTH CAROLINA

**S.C. Code Ann. § 24-21-990 (Law. Co-op 1992).** Civil rights restored upon pardon.

A pardon shall fully restore all civil rights lost as a result of a conviction, which shall include the right to:

(1) register to vote; (2) vote; (3) serve on a jury; (4) hold public office, except as provided in Section 16-13-210; (5) testify without having the fact of his conviction introduced for impeachment purposes unless the crime indicates a lack of veracity; (6) not have his testimony excluded in a legal proceeding if convicted of perjury; and (7) be licensed for any occupation requiring a license.

SOUTH DAKOTA

**S.D. Codified Laws Ann. § 23A-27-35 (1988).** Suspension of civil rights on sentence to penitentiary—Prisoner as witness—Restoration of rights on suspension or termination of sentence.

A sentence of imprisonment in the state penitentiary for any term suspends the right of the person so sentenced to vote, to hold public office, to become a candidate for public office and to serve on a jury, and forfeits all public offices and all private trusts, authority or power during the term of such imprisonment. Any person who is serving a term in any penitentiary shall be a competent witness in any action now pending or hereafter commenced in the courts of this state, and his deposition may be taken in the same manner prescribed by statute or rule relating to taking of depositions. After a suspension of sentence pursuant to § 23A-27-18, upon the termination of the time of the original sentence or the time extended by order of the court, a defendant's rights withheld by this section are restored.



**S.D. Codified Laws Ann. § 24-5-2 (1988 & Supp. 1993).** Restoration to citizenship on discharge—Certificate issued by warden—Copy to clerk of courts.

Whenever any convict has been discharged under the provisions of § 24-5-1 he shall at the time of his discharge be considered as restored to the full rights of citizenship. At the time of the discharge of any convict under the provisions of this chapter, he shall receive from the warden a certificate and such certificate shall be due notice that he has been restored to the full rights of a citizen. If a convict is on parole at the time he becomes eligible for discharge, the warden shall issue a like certificate, which shall be due notice that such convict has been restored to the full rights of a citizen. Any convict discharged prior to July 1, 1965 shall, as of the time of his discharge, be considered as restored to the full rights of citizenship. The warden is hereby authorized to issue a certificate to such ex-convicts.

The warden shall mail a copy of the certificate to the clerk of court for that county from which the convict was sentenced.

TENNESSEE

**Tenn. Code Ann. § 40-29-101 (1990).** Jurisdiction—Time of application.

(a) Persons rendered infamous or deprived of the rights of citizenship by the judgment of any state or federal court may have their full rights of citizenship restored by the circuit court.

(b) Those pardoned, if the pardon does restore full rights of citizenship, may petition for restoration immediately after such pardon;

provided, that a court shall not have jurisdiction to alter, delete or render void special conditions of pardon pertaining to the right of suffrage.

(c) Those convicted of an infamous crime may petition for restoration up to the expiration of the maximum sentence imposed for any such infamous crime.

**Tenn. Code Ann. § 40-29-105 (1990).** Felons convicted of infamous crimes after July 1, 1986.

(a) The provisions and procedures provided for in §§ 40-29-101—40-29-104 shall apply to all persons convicted of an infamous crime prior to July 1, 1986.

(b) For all persons convicted of infamous crimes after July 1, 1986, the following procedures shall apply:

(1) Persons rendered infamous or deprived of the rights of citizenship by the judgment of any state or federal court may have their full rights of citizenship restored upon:

(A) Receiving a pardon, except where such pardon contains special conditions pertaining to the right to suffrage;

(B) Service or expiration of the maximum sentence imposed for any such infamous crime; or

(C) Being granted final release from incarceration or supervision by the board of parole, the department of correction or county correction authority;

(2) Persons rendered infamous after July 1, 1986, by virtue of being convicted of one (1)



of the following crimes shall never be eligible to register and vote in this state: First degree murder, aggravated rape, treason or voter fraud;

(3) Any person eligible for restoration of citizenship pursuant to subdivision (b)(1) may request, and then shall be issued, a certificate of restoration upon a form prescribed by the coordinator of elections, by:

(A) The pardoning authority; or

(B) An agent or officer of the supervising or incarcerating authority;

(4) Any authority issuing a certificate of restoration shall forward a copy of such certificate to the coordinator of elections;

(5) Any person issued a certificate of restoration shall submit, to the registrar of the county in which he is eligible to vote, such certificate and upon verification of the same with the coordinator of elections be issued a voter registration card entitling him to vote; and

(6) A certificate of restoration issued pursuant to subdivision (b)(3) shall be sufficient proof to the registrar that such person fulfills the above requirements; however, before allowing a person convicted of an infamous crime to become a registered voter, it is the duty of the registrar in each county to verify with the coordinator of elections that such person is eligible to register under the provisions of this section.

WASHINGTON

**Wash. Rev. Code Ann. § 9.96.010 (West 1988).** Restoration of civil rights.

> Whenever the governor shall grant a pardon to a person convicted of an infamous crime, or whenever the maximum term of imprisonment for which any such person was committed is about to expire or has expired, and such person has not otherwise had his civil rights restored, the governor shall have the power, in his discretion, to restore to such person his civil rights in the manner as in this chapter provided.

**Wash. Rev. Code Ann. § 9.96.020 (West 1988).** Form of certificate.

> Whenever the governor shall determine to restore his civil rights to any person convicted of an infamous crime in any superior court of this state, he shall execute and file in the office of the secretary of state an instrument in writing in substantially the following form:
>
> "To the People of the State of Washington
>
> Greeting:
>
> I, the undersigned Governor of the State of Washington, by virtue of the power vested in my office by the constitution and laws of the State of Washington, do by these presents restore to ———— his civil rights forfeited by him (or her) by reason of his (or her) conviction of the crime of ———— (naming it) in the Superior Court for the County of ————, on to-wit: The —— day of ————, 19—.
>
> Dated the — day of ————, 19—.
>
> (Signed) ————————
> Governor of Washington"



**Wash. Rev. Code Ann. § 9.96.505 (West 1988).** Final discharge of parolee—Restoration of civil rights —Governor's pardoning power not affected.

> When a prisoner on parole has performed the obligations of his release for such time as shall satisfy the board of prison terms and paroles that his final release is not incompatible with the best interests of society and the welfare of the paroled individual, the board may make a final order of discharge and issue a certificate of discharge to the prisoner. The board retains the jurisdiction to issue a certificate of discharge after the expiration of the prisoner's or parolee's maximum statutory sentence: *Provided,* That no such order of discharge shall be made in any case within a period of less than one year from the date on which the board has conditionally discharged the parolee from active supervision by a probation and parole officer, except where the parolee's maximum statutory sentence expires earlier. Such discharge, regardless of when issued, shall have the effect of restoring all civil rights lost by operation of law upon conviction, and the certification of discharge shall so state.
>
> The discharge provided for in this section shall be considered as a part of the sentence of the convicted person and shall not in any manner be construed as affecting the powers of the governor to pardon any such person.

**Wash. Rev. Code Ann. § 9.92.066 (West 1988).** Termination of suspended sentence—Restoration of civil rights.

> Upon termination of any suspended sentence under RCW 9.92.060 or 9.95.210, such person may apply to the court for restoration of his civil rights. Thereupon the court may in its

discretion enter an order directing that such defendant shall thereafter be released from all penalties and disabilities resulting from the offense or crime of which he has been convicted.

WISCONSIN

**Wis. Stat. Ann. § 304.078 (1993).** Civil rights restored to convicted persons satisfying sentence.

Every person who is convicted of a crime obtains a restoration of his or her civil rights by serving out his or her term of imprisonment or otherwise satisfying his or her sentence. The certificate of the department or other responsible supervising agency that a convicted person has served his or her sentence or otherwise satisfied the judgment against him or her is evidence of that fact and that the person is restored to his or her civil rights. The department or other agency shall list in the person's certificate rights which have been restored and which have not been restored. Persons who served out their terms of imprisonment or otherwise satisfied their sentences prior to August 14, 1947, are likewise restored to their civil rights from and after September 25, 1959.

WYOMING

**Wyo. Stat. § 7-13-105 (1977).** Certificate of restoration of rights.

(a) Upon receipt of a written application, the governor may issue a person convicted of a felony under the laws of a state or the United States a certificate which restores the rights lost pursuant to W.S. 6-10-10-106 when:

(i) His term of sentence expires; or

(ii) He satisfactorily completes a probation period.